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Canada. Restrictive Trade  
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Report







CANADA

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

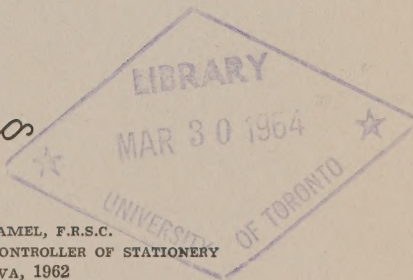
Concerning the Manufacture, Distribution and  
Sale of Evaporated Milk and Related Products



DEPARTMENT OF JUSTICE  
OTTAWA



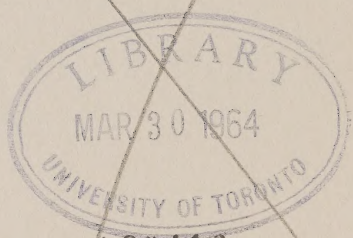
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OTTAWA, 1962



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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE MANUFACTURE, DISTRIBUTION AND  
SALE OF EVAPORATED MILK  
AND RELATED PRODUCTS

COMBINES INVESTIGATION ACT

Ottawa

1962

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
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RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

August 28, 1962

Honourable Donald M. Fleming, P.C., Q.C., M.P.,  
Minister of Justice,  
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission, arising out of an inquiry relating to the manufacture, distribution and sale of evaporated milk and related products.


The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission at Toronto on February 7, 1962. In these proceedings Messrs. A.G. Powell and S.F. Sommerfeld appeared for the Director of Investigation and Research, and Messrs. A.J. MacIntosh, Q.C. and J.D. Brownlie appeared on behalf of Carnation Company Limited against which company allegations were made in the Statement of Evidence.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith  
Chairman



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## CHAPTER I

### INTRODUCTION

#### 1. Reference to the Commission

This inquiry, which was made by the Director of Investigation and Research, was brought before the Restrictive Trade Practices Commission under the provisions of section 18 of the Combines Investigation Act by the submission of a statement of the evidence obtained in the inquiry under date of November 2, 1961. At the same time the Director submitted a copy of the Statement of Evidence to Carnation Company Limited, against whom allegations were made therein, in accordance with section 18(1) of the Act. This corporation is sometimes referred to in the Statement of Evidence and will also be referred to in this report as "Carnation".

#### 2. Conduct of the Investigation by the Director

The origin of the inquiry conducted by the Director is described as follows in the Statement of Evidence:

"2. The inquiry to which this Statement of Evidence relates was commenced in the first part of 1960 after receipt by the Director of a complaint alleging that Carnation Company Limited (sometimes hereinafter referred to as Carnation) has engaged in a policy of selling evaporated whole milk in certain areas of Canada, more particularly in the four western provinces, at prices lower than those exacted by Carnation in the eastern provinces, and that such policy had the effect or was designed to have the effect of substantially lessening competition or of eliminating a competitor contrary to section 412(1)(b) of the Criminal Code."

In the course of the inquiry certain documents were obtained under authority by representatives of the Director from the premises of the Fraser Valley Milk Producers' Association, Vancouver, British Columbia and from the premises of Carnation Company Limited, Toronto, Ontario. Photographic copies of the documents were entered



as exhibits during hearings held in the inquiry and the original documents were returned to the offices in which they had been found. All documents selected for copying were marked with code letters in the upper right-hand corner to indicate the particular premises on which the documents were found and each document was given a separate serial number. The documents from the premises of Carnation Company Limited are identified by the code letters EMI and those from the Fraser Valley Milk Producers' Association by the code letters EMH. In this report such documents as are referred to will be designated by the respective code letters and serial numbers.

During the inquiry, hearings for the taking of evidence were held on application of the Director before Mr. C. Rhodes Smith, Q.C., Chairman, Restrictive Trade Practices Commission on the dates and at the places indicated below, when the following witnesses were examined:

<u>Name of Witness</u>	<u>Business Affiliation</u>	<u>Place</u>	<u>Date of Hearing</u>
Dougal Angus McDonald	Sales Manager, Pacific Milk Division, Fraser Valley Milk Producers' Association	Vancouver	November 14, 1960
Robert William Wilson	Assistant Sales Manager, Pacific Milk Division, Fraser Valley Milk Producers' Association	Vancouver	November 14, 1960
Lyle Alexander Atkinson	General Manager, Fraser Valley Milk Producers' Association	Vancouver	November 14, 1960
Ellis Alvin Johnstone	General Manager Central Alberta Dairy Pool, Red Deer, Alberta.	Calgary	November 15, 1960
Douglas Robert Marshall	Sales Manager, Alpha Milk Division, Central Alberta Dairy Pool, Red Deer, Alberta.	Calgary	November 15, 1960

<u>Name of Witness</u>	<u>Business Affiliation</u>	<u>Place</u>	<u>Date of Hearing</u>
Ted Eugene Lang	Vice-President and General Manager, Carnation Company Limited, Toronto, Ontario.	Toronto	January 24, 1961
William George Spratt	General Sales Manager, Carnation Company Limited, Toronto, Ontario.	Toronto	January 24, 1961

References to evidence given at these hearings are indicated in the case of witnesses heard at Toronto as "(Evidence, T. p. - )", and for other witnesses as "(Evidence, p. - )".

Information was also secured by the Director in the form of written returns by way of answers to questionnaires which were sent to manufacturers of evaporated milk in Canada under the authority of the Combines Investigation Act. In addition, the Director obtained information from published material relating to the process of manufacturing evaporated milk.

The Statement of Evidence contains brief descriptions of all the manufacturers of evaporated milk sending returns of information to the Director but as the inquiry relates particularly to Western Canada and as three manufacturers accounted for more than 95 per cent of the shipments of evaporated milk to the four western provinces in the period with which the inquiry is concerned, references will be made only to the three companies, as follows:

Carnation Company Limited (Carnation) whose head office is in Toronto, Ontario, was incorporated under the laws of the Dominion of Canada, by Letters Patent dated December 4, 1916. It is a wholly-owned subsidiary of Carnation Company whose head office is in Los Angeles, California, U.S.A.

Carnation has manufactured evaporated whole milk at its plant at Aylmer, Ontario, since 1917 and at its plant at Sherbrooke, Quebec, since 1939. Partly skimmed evaporated milk has been manufactured by Carnation at Aylmer since 1954 and at Sherbrooke since 1955.

Carnation distributes its evaporated whole milk under the brand name "Carnation". The company has another brand name "Canada First" which is used for industrial sales only. Carnation

distributes partly skimmed evaporated milk under the brand name "Morning".

Central Alberta Dairy Pool uses the brand name "Alpha" for its evaporated whole milk and is sometimes referred to in the Statement of Evidence by that name and "Alpha" will also be used in this report in referring to Central Alberta Dairy Pool.

Central Alberta Dairy Pool whose head office is located in Red Deer, Alberta, was incorporated under the Co-operative Marketing Association Act of Alberta in 1924. Evaporated milk has been manufactured at the firm's Red Deer plant since 1936. It also manufactures partly skimmed evaporated milk and handles other lines of dairy products.

Fraser Valley Milk Producers' Association (F.V.M.P.A.) uses the brand name "Pacific" for its evaporated whole milk and is sometimes referred to in the Statement of Evidence by that name and "Pacific" will also be used in this report in referring to F.V.M.P.A.

F.V.M.P.A. was incorporated in 1913 under the Co-operative Associations Act of British Columbia. In 1924 F.V.M.P.A. purchased a plant located in Abbotsford, British Columbia from Pacific Milk Company Limited, and the manufacture of evaporated whole milk has been carried on there since its acquisition. Manufacture of partly skimmed evaporated milk was commenced in 1943. This product is distributed under the brand names "Pacific" and "Delta".

### 3. Hearing Before the Commission

On receipt of the Statement of Evidence, the Commission, in accordance with the provisions of section 18 of the Combines Investigation Act, by an Order dated November 30, 1961 fixed Monday, February 5, 1962 at the hour of 10 o'clock in the forenoon, in the Board Room, Department of Labour, Mackenzie Building, 36 Adelaide Street East, in the City of Toronto, in the Province of Ontario as the date, time and place at which argument could be submitted by or on behalf of the Director in support of the Statement of Evidence and at which Carnation Company Limited would be allowed full opportunity to be heard with respect to the allegations against the Company made in the Statement of Evidence. As counsel for Carnation Company Limited was unable, because of illness, to appear on February 5 the hearing was held on February 7, 1962.

At the hearing the following appearances were entered:



A.G. Powell	-	For Director of Investigation
S.F. Sommerfeld		and Research
A.J. MacIntosh, Q.C.	-	For Carnation Company
J.D. Brownlie		Limited

Before argument was heard by the Commission, one witness, Mr. L.S. Allen, office manager, head office, Carnation Company Limited, Toronto, Ontario gave evidence and exhibits H-1 to H-9 were filed. In this report reference to the transcript of the proceedings before the Commission will be made as (Hearing, p....).

#### 4. Allegations in the Statement of Evidence

The concluding section of the Statement of Evidence contains a review of the evidence and allegations against the Carnation Company Limited. This section may be recapitulated as follows:

##### "(i) Certain Effects of the 'Price War'"

153. The evidence already described in this Statement of Evidence shows that first grade evaporated milk is a standardized product made in Canada by Carnation, Alpha and Pacific as well as some others. It shows too that in Western Canada, sales of evaporated milk are substantial in amount and apparently larger on a per capita basis than in Eastern Canada. In addition, it shows that three suppliers, Carnation, Alpha and Pacific supplied by far the larger part of the evaporated milk that was apparently consumed in the four western provinces, that Alpha's sales in Alberta were considerable and obviously of importance to it and that Pacific held a very large proportion of the important B.C. market. The evidence indicates that Carnation's position in the Alberta and B.C. markets was deteriorating and was not so strong in 1959 as in 1958. The evidence shows too that Carnation was concerned about this deterioration for some considerable time prior to January 4, 1960 and had given consideration to the adoption of various plans to reverse the trend.

154. In addition the evidence shows that consumers of evaporated milk are sensitive to small variations in the retail price as between branded lines and in most areas will switch brands accordingly (Ev. T. p. 46). Also the evidence shows clearly that small variations in the price or cost of evaporated milk will influence purchases by wholesale and chain store buyers of branded lines of evaporated milk.

155. Information on basic prices charged by Carnation, Alpha and [Pacific] has been given in Tables IX-A and IX-B. The whole effect of the oral and documentary evidence in the inquiry is that basically Carnation sets the level of prevailing prices. Allowances or price cuts that have been made by Alpha or Pacific have, for all practical purposes, been allowances or price cuts from Carnation's price.

156. Carnation produces its evaporated milk in Ontario and Quebec. Carnation's return of information (Reply to Item 27) indicates that freight costs to centers in Western Canada are considerably higher than to the larger centers in Ontario and Quebec and shows that the company's zone prices make substantial but not full allowance for this fact. Thus it is clearly the case that Carnation's net per case factory realization is not ordinarily so large on a case sold to a customer in Calgary or Vancouver as it is on a case sold to a customer in Toronto or Montreal. Since the highest prices ordinarily prevail in Saskatchewan, Alberta and Eastern B.C. the net realization on sales by Alpha will tend to be increasingly lower the farther the location of the customer from its plant in Red Deer. Similarly Pacific's factory net per case realization will be increasingly lower as it ships to customers located farther from its plant at Abbotsford, B.C. However, while it is the obvious fact that Alpha and Pacific will realize less on sales made to distant customers than to customers located near to their plants it is also to be noted that on sales to nearby customers the price structure is such as to allow them substantially higher net per case factory realization than is available to Carnation on any of its sales.

157. In combination the various factors described allowed Pacific and Alpha in 1958 and 1959 to seek sales through the making of certain allowances or through the use of certain promotional devices that had the effect of lowering the net cost of their evaporated milk product to their customers or some of them below Carnation's quoted price. Such practices by Alpha and Pacific were clearly known to Carnation before January 4, 1960 although it may not have had full and precise details. In addition, Carnation's comparatively poor position in the Western Canadian market, and particularly in Alberta and B.C. was worsening and the evidence shows Carnation was seriously concerned about this and to some extent groping for means to stop the erosion and reverse the trend.

158. Alpha's move into the western part of B.C. in early 1959 clearly did not meet with much success and its 2¢ off the label promotion that it introduced in early January 1960 was obviously a somewhat determined effort to establish its 'brand' in a way that would compel the whole-salers' and consumers' attention. The evidence shows (Table VIII) that Alpha met with some measure of success, at least in a temporary way, in this regard. The evidence also shows that Carnation retaliated by lowering its price by \$1.00 per case in British Columbia and Alberta and that as a result of this move by Carnation, Pacific lowered its price by \$1.00 per case from B.C. right through to the Lakehead.

159. It is therefore the case that each of Alpha, Carnation and Pacific was the first to lower the price in some particular area of Western Canada in early January, 1960. It is clear too that the three first price lowerings involved were made by the three firms for three separate basic reasons. Alpha's move in B.C. has already been described and explained. Carnation's move with respect to British Columbia and, particularly, Alberta was in part by way of retaliation against Alpha and had the effect of setting up a 'chaotic situation' which it could exploit for its own ends. Pacific's move in Saskatchewan, Manitoba and Northwestern Ontario was undoubtedly by way of retaliation against Carnation in a market area in which Pacific was relatively weak. . . .

160. The evidence with respect to developments between January 4, 1961 [sic 1960] and March 10, 1961 [sic 1960], by which time Carnation's prices in Western Canada had been restored to their level as of the end of December, 1959 has been fully described earlier in this Statement. That evidence clearly shows that while all three firms may have wanted a general restoration of the price level Carnation insisted that before it would participate in the restoration certain things had to be done.

161. Evidence that has been described also shows that Pacific and Alpha representatives at the meeting of February 7, 1960 in Vancouver were of the opinion that if, after prices were restored they competed on price with Carnation 'the sky might fall on you' in the words of Mr. Atkinson. . . .

Certain evidence of Mr. Johnstone of Alpha is then set out to the effect that because of the experience during the price war it was felt that Alpha was definitely restricted as to the nature of competitive activity it might engage in.

"162. Thus, as at the time prices were restored in early March 1960, Pacific and Alpha had both cut out certain types of allowances that had been discussed at the meetings of January 18 and February 7 or were under agreement to cut out others by June 30, 1960 and were of the opinion that they might precipitate severe and expensive retaliation on a price basis by Carnation should they re-introduce these or similar allowances and thereby cut below Carnation's price.

163. Pacific and Alpha were free to compete with Carnation through advertising in various media such as newspapers, radio, television, magazines and billboards. It was the view of Mr. Atkinson of Pacific ... and Mr. Johnstone of Alpha that their organizations were under some handicap in this kind of competition because of the regional nature of their business and the national and international characteristics of Carnation which gave it certain advantages in this kind of activity. . . .

. . .

167. Thus one of the effects of the 'price war' was to restrict or remove the ordinary freedom Alpha and Pacific had to compete on a price basis.

168. Pacific and Alpha brands of evaporated milk are made by milk producers' co-operatives. The 'price war' had some direct effect upon them because it caused a drop in their revenues which might be expected to have an effect on payments made for milk as, in fact, the evidence shows that it did. (Ev. pp. 88-89; 143-144)."

Paragraph 169 of the Statement of Evidence refers to a discount which had been given by Pacific to certain wholesalers prior to the price war and which was not continued when prices were restored. The paragraph continues "Certainly one of the results or effects of the 'price war' was that Pacific stopped giving this discount and a complementary result or effect was that certain of Pacific's customers stopped getting it".

"(ii) Allegation

170. Prior to August 10, 1960 section 412(1)(b) of the Criminal Code read as follows:-

'Every one engaged in trade, commerce or industry who . . .



- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, having or designed to have the effect of substantially lessening competition or eliminating a competitor in such part of Canada; or
- (c) . . .

is guilty of an indictable offence and is liable to imprisonment for two years.'

It is alleged that Carnation Company Limited, 44 Eglinton Avenue West, Toronto, Ontario offended against this section of the Criminal Code in January, February and March 1960 when, as described earlier in this Statement of Evidence it engaged in a policy of selling its Carnation Brand of evaporated whole milk in the province of Alberta at a price below that charged at the same time for similar goods in the City of Toronto, Ontario and elsewhere in the province of Ontario and Quebec, which policy had or was designed to have the effect of substantially lessening competition."

5. Position Taken by Carnation Company Limited  
with Respect to the Allegations

At the commencement of the hearing before the Commission, counsel for Carnation stated the position being taken with respect to the allegations made by the Director in the Statement of Evidence which may be summarized as follows:

1. As the allegation is made with respect to the price charged by Carnation in the Province of Alberta the evidence relied on by the Director must show that the allegation is true in Alberta. Evidence as to what the effects of Carnation's policies were in other parts of the Prairie Provinces is not relevant to the allegation.
2. Carnation was not the price leader throughout the Prairie Provinces as alleged in the Statement of Evidence.
3. During the period with which the inquiry is concerned Carnation's position was weakening in Alberta.
4. The price decrease by Carnation in British Columbia and Alberta which forms the basis of the allegation was linked with and caused by a two cent off label offer made by Alpha.



5. It was submitted that as a matter of fact virtually no competition was lessened in Alberta.

6. In considering the allegation the Commission must have regard for the whole field of competition as it existed in Alberta at the relevant time and ascertain whether there was a substantial amount of competition removed or diminished. This submission, of course, does not bear on that part of the allegation relating to the question of the policy of Carnation being a matter of design.

7. Most of the competition which was lessened was illegal under the provisions of the Combines Investigation Act, particularly those provisions relating to discriminatory pricing allowances or was about to be made illegal by section 33B of the Combines Investigation Act. Section 33B was included in a bill amending the Combines Investigation Act which received Royal Assent on August 10, 1960.

8. It was submitted that the competition referred to in section 412 of the Criminal Code must be competition which is proper competition and not rendered unlawful by legislation. It can hardly be an offence for some person to establish a policy which has the effect of removing what is a form of competition that is rendered illegal by section 33A(1)(a) or section 33B of the Combines Investigation Act.

9. At no time were any restrictions ever placed on Alpha or Pacific as to the price levels at which they might sell evaporated milk in the Province of Alberta.

10. It was submitted that the price cut made by Carnation in January, 1960 was not designed to have the effect of substantially lessening competition in the Province of Alberta. The allegation that the action of Carnation in reducing prices in January, 1960 had the effect of setting up a chaotic situation must be viewed in relation to the action of Alpha in commencing a form of price cut of two cents per can prior to any price cut by Carnation. It was submitted that Alpha's action had as much to do with setting up the chaotic situation as that of anybody else.

11. The conclusion of the Director that Alpha and Pacific were of the opinion that if they should re-introduce certain types of allowances eliminated in the first part of 1960 or offer similar allowances they might precipitate severe and expensive retaliation on a price basis by Carnation lacks precision. What may be "severe and expensive" to one person may be something different to another. This is in the nature of a generality which is not sufficient without being further defined. It was submitted that the evidence relied on for the conclusion was led extensively and such evidence should be given little if any weight by the Commission.

12. It was submitted that Alpha and Pacific have continued to be strong and vigorous competitors in the Province of Alberta and that Carnation's position has grown weaker in 1960 and 1961. These subsequent developments are very relevant to an allegation that a powerful competitor has taken steps which have affected the ability of others to compete.

## CHAPTER II

### RELATIVE POSITIONS OF CARNATION, ALPHA AND PACIFIC IN EVAPORATED MILK INDUSTRY

#### 1. Evaporated Milk Industry in Canada

Evaporated milk is manufactured in Canada in different degrees of butterfat content. The principal product groups are known as evaporated whole milk, partly skimmed evaporated milk and evaporated skimmed milk. Evaporated whole milk constitutes the bulk of the production of the industry, which is consumed largely in Canada as exports form only a small part of the total shipments.

Evaporated whole milk is put up in cans of three sizes, namely, 16 oz. cans,  $14\frac{1}{2}$  oz. cans and 6 oz. cans. Information received by the Director indicated that  $14\frac{1}{2}$  oz. cans were used for export shipments. The 16 oz. and  $14\frac{1}{2}$  oz. cans are packed in cases of 48 cans while 6 oz. cans are packed in cases of 96 cans. Some evaporated whole milk is sold in bulk to certain users.

The Director found from a survey of firms engaged in the manufacture or distribution of evaporated milk that there have been 11 firms engaged in the production or distribution of evaporated milk for resale in Canada, of which 8 were actively engaged in manufacturing evaporated milk at the time the inquiry was conducted and one was distributing evaporated milk which it bought from other manufacturers under its own trade name.

The bulk of evaporated milk distributed in Canada is sold as manufacturers' brands but manufacturers also put up evaporated whole milk under private brands for certain food chains and grocery wholesalers.

Table 1 shows the production of evaporated whole milk by the firms from whom the Director obtained returns of information which was packed under manufacturers' brands and private brands. The Director did not survey the production of evaporated milk by manufacturers producing it only for their own further use in the manufacture of other food products.

Table 1

Production of Evaporated Whole Milk  
for Distribution under Manufacturers'  
Brands and Private Brands

<u>Years</u>	<u>Manufacturers' Brands</u>	<u>Private Brands</u>	<u>Total</u>
	('000 lb.)	('000 lb.)	('000 lb.)
1956	278,961	11,197	290,158
1957	292,823	11,699	304,522
1958	285,193	12,101	297,294
1959	283,521	12,283	295,804
Jan. - Mar. 1960	53,772	3,948	57,720

Source: Returns of Information.

As no manufacture of partly skimmed evaporated milk under private brands was reported to the Director, the production of this product is shown as being packed entirely under manufacturers' brands in Table 2.

Table 2

Production of Partly Skimmed Evaporated Milk

<u>Years</u>	<u>Manufacturers' Brands<sup>(1)</sup></u>
	('000 lb.)
1956	18,143
1957	20,638
1958	20,823
1959	21,909
Jan. - Mar. 1960	6,110

(1) No manufacture of private brands was reported.

Source: Returns of Information.

Domestic and export shipments of evaporated whole milk are shown in Table 3. The figures in the table do not include shipments of private brands which, it is presumed, would be exclusively or predominantly for domestic consumption.

Table 3

Shipments of Evaporated Whole Milk<sup>(1)</sup>

<u>Years</u>	<u>Domestic Shipments</u>	<u>Export</u>	<u>Total Shipments</u>
	( '000 lb. )	( '000 lb. )	( '000 lb. )
1956	272, 724	5, 404	278, 128
1957	283, 564	4, 430	287, 994
1958	285, 764	2, 941	288, 705
1959	270, 447	4, 597	275, 044
Jan-Mar. 1960	72, 063	802	72, 865

(1) Not including private brands.

Source: Returns of Information.

The Director endeavoured to secure information as to shipments of evaporated whole milk in or to each of the Western Provinces. Some manufacturers were not able to provide a breakdown of shipments by provinces for the period prior to 1959 and in the case of one company some provincial figures were combined for the period surveyed. In this case the Director made an arbitrary division of the figures which, in view of the smallness of the shipments is not considered to affect the over-all figures in any significant way. The figures compiled by the Director are shown in Table 4.



Table 4

Shipments of Evaporated Whole Milk to  
Western Provinces<sup>(1)</sup>

('000 lb.)

<u>Period</u>	<u>Manitoba</u>	<u>Saskatchewan</u>	<u>Alberta</u>	<u>British Columbia</u>	<u>Total</u>
1958		46, 115 <sup>(2)</sup>		49, 042	95, 157
1959	11, 751	13, 079	21, 436	49, 266	95, 532
<u>Months</u>					
1959-Jan.	1, 058	1, 350	1, 973	4, 327	8, 707
-Feb.	1, 001	1, 107	1, 514	3, 875	7, 496
-Mar.	908	1, 040	2, 073	4, 506	8, 527
-Apr.	1, 140	1, 156	1, 664	3, 863	7, 823
1960-Jan.	3, 069	3, 174	4, 318	10, 840	21, 401
-Feb.	744	1, 017	1, 947	6, 776	10, 484
-Mar.	846	842	1, 859	1, 269	4, 818
-Apr.	377	387	539	1, 332	2, 636

(1) Including 16 oz. and 6 oz. cans but not private brands.

(2) Combined figures for Manitoba, Saskatchewan and Alberta.

Note: The figures may not add exactly because of rounding to nearest thousand.

Source: Returns of Information.

2. Positions of Carnation, Alpha and Pacific  
in Evaporated Milk Industry

Carnation is the largest manufacturer of evaporated whole milk in Canada, accounting for more than half of the total production of the industry. The relative positions of Carnation, Pacific and Alpha with respect to the total production of evaporated whole milk and the production of manufacturers' brands are shown in Table 5.

Table 5

Evaporated Whole Milk, Carnation - Alpha - Pacific Production  
as a Percentage of Total Production for Industry

Year	Total Production, Incl. Private Brands			Production, Manufacturers' Brands only		
	Carnation	Alpha	Pacific	Carnation	Alpha	Pacific
	%	%	%	%	%	%
1956	59.2	4.8	18.3	61.6	4.3	19.0
1957	61.7	5.7	17.7	64.1	5.3	18.4
1958	64.7	5.9	17.3	67.4	5.5	18.1
1959	63.4	6.2	17.6	66.1	5.8	18.4
Jan. Feb.						
Mar. 1960	52.7	8.0	26.1	56.6	7.1	28.0

Source: Derived from data given in Returns of Information.

It will be seen from Table 5 that Carnation's production in 1959 was more than  $3\frac{1}{2}$  times that of Pacific and more than 10 times that of Alpha. The latter produces some evaporated whole milk under private brands, whereas Carnation and Pacific do not, so Alpha's share of total production is larger than its share of manufacturers' brands. Carnation, Alpha and Pacific together account for more than 87 per cent of the total production of evaporated whole milk in Canada.

The relative positions of Carnation, Pacific and Alpha in regard to domestic shipments of evaporated whole milk, not including private brands, are shown in Table 6.

Table 6

Evaporated Whole Milk, Carnation - Alpha - Pacific Shipments  
as a Percentage of Total Domestic Shipments<sup>(1)</sup>

<u>Year</u>	<u>Carnation</u>	<u>Alpha</u>	<u>Pacific</u>
	%	%	%
1956	63.7	4.5	18.8
1957	65.2	4.8	18.3
1958	66.4	5.1	18.6
1959	66.7	6.0	19.9
Jan. Feb. Mar. 1960	58.4	10.3	21.5

(1) Not including private brands.

Source: Derived from data given in Returns of Information.

Shipments of evaporated whole milk other than private brands by all companies in and to Eastern and Western Provinces for the years 1958 and 1959 are shown in Table 7 together with shipments of Carnation.

Table 7

Evaporated Whole Milk Shipments in and  
to Eastern and Western Provinces<sup>(1)</sup>

	<u>1958</u>					
	<u>Eastern Provinces</u>		<u>Western Provinces</u>		<u>Total</u>	
	<u>Pounds</u>	<u>Per cent</u>	<u>Pounds</u>	<u>Per cent</u>	<u>Pounds</u>	<u>Per cent</u>
	( '000)		( '000)		( '000)	
Industry (all companies)	190,607	66.7	95,157	33.3	285,764	100.0
Carnation	163,817	86.2	26,187	13.8	190,004	100.0
Carnation - per cent of industry		85.9		27.5		66.4
	<u>1959</u>					
Industry (all companies)	174,914	64.7	95,532	35.3	270,446	100.0
Carnation	156,049	86.4	24,560	13.6	180,609	100.0
Carnation - per cent of industry		89.2		25.7		66.7

(1) Not including private brands.

Source: Returns of Information.

It will be seen from Table 7 that about one-third of the total shipments of evaporated whole milk was destined to Western Canada and about two-thirds to the rest of the country. In the case of Carnation, shipments to Western Canada formed less than 14 per cent of its total shipments and those to Eastern Provinces constituted over 86 per cent.

Table 7 also shows that while, as was shown by Tables 5 and 6, Carnation's share of total production and shipments amounted to about two-thirds in 1959, it accounted for almost 90 per cent of the total shipments to Eastern Provinces and for less than 30 per cent of the distribution in the Western Provinces.

### 3. Positions of Carnation, Alpha and Pacific in Western Canada

Reference has already been made to the fact that in 1958 and 1959 Carnation's shipments of evaporated whole milk to Western Provinces formed slightly less than 14 per cent of the Company's total domestic shipments. The relative shares of Carnation's shipments to each of the four Western Provinces in the same two years are shown in Table 8. The distribution of the shipments of Alpha and Pacific in the same territories are also shown in Table 8. In contrast with Carnation, whose sales to Western Provinces form a minor part of its total sales, Alpha and Pacific make almost 100 per cent of their shipments in and to the four Western Provinces. Pacific makes 80 per cent of its sales in British Columbia while the balance of its business is divided in roughly even proportions among the three Prairie Provinces. It will also be seen from Table 8 that Alpha makes about 90 per cent of its sales of evaporated whole milk in Alberta and Saskatchewan, with sales in Alberta being about twice the volume in Saskatchewan. No sales were reported by Alpha in British Columbia in 1958 and in 1959 sales in Manitoba and British Columbia were, roughly, in the same proportions, less than 4 per cent of total Alpha shipments.

Table 8 shows the distribution of shipments of Carnation, Alpha and Pacific as percentages of the total shipments of each producer. In Table 9 the distribution of shipments represents the shares which the shipments of each manufacturer form of the total shipments by all manufacturers in the respective Western Provinces.

It will be seen from Table 9 that in 1959 Carnation had over 60 per cent of the market in Manitoba with sales more than twice as large as those of Pacific. Alpha's shipments to Manitoba formed slightly more than 5 per cent of the total shipments of all manufacturers to that province. The shares of the Saskatchewan market held by Carnation and Alpha were fairly close with Alpha having 38.1 per cent and Carnation 34.2 per cent, while Pacific had 23.3 per cent. The same order appears in the case of Alberta, Alpha, 44.6 per cent; Carnation,



35.4 per cent and Pacific 18.7 per cent.

In view of the fact already mentioned, that Pacific makes 80 per cent of its sales of evaporated whole milk in British Columbia it would be expected that the local manufacturer would have a large share of its home market. This is shown to be the case by the figures for British Columbia in Table 9. In 1959, Pacific had 88.0 per cent of that market, Carnation had 10.5 per cent and Alpha had only one-tenth of one per cent.

Table 8

Proportion of Total Shipments of Carnation, Alpha and Pacific  
Made to Each of the Western Provinces, 1958 and 1959

(expressed as a percentage of each company's total shipments)

	1958			1959			Jan. Feb. Mar. 1960		
	Carnation %	Alpha %	Pacific %	Carnation %	Alpha %	Pacific %	Carnation %	Alpha %	Pacific %
Manitoba	3.6	4.2	*	3.9	3.9	6.0	6.3	3.5	9.2
Alberta	4.4	61.9	*	4.1	58.4	7.4	7.9	43.7	8.9
Saskatchewan	2.4	32.2	*	2.4	30.4	5.6	4.1	25.2	8.5
Br. Columbia	3.0	nil	80.9	2.8	3.6	80.3	13.0	27.2	72.5

\* Figures not available

Source: Returns of Information

Table 9

Shipments of Evaporated Whole Milk - Western Provinces  
Carnation - Alpha - Pacific

(expressed as the percentages of total shipments of all manufacturers brands to each province that was made by each of the three manufacturers)

	1958			1959			Jan - Apr 1959			Jan - Apr 1960		
	Carnation			Carnation			Carnation			Carnation		
	Alpha	Pacific	Pacific	Alpha	Pacific	Pacific	Alpha	Pacific	Pacific	Alpha	Pacific	Pacific
Manitoba )				61.8	5.4	27.9	63.3	5.0	25.4	59.2	5.6	30.3
Alberta )	43.9	31.6	21.2	35.4	44.6	18.7	35.3	45.2	18.3	40.3	41.1	17.5
Saskatchewan )				34.2	38.1	23.3	37.5	38.6	22.2	35.4	37.3	26.1
Br. Columbia	12.1	nil	87.7	10.5	0.1	88.0	11.1	1.1	87.6	28.1	10.2	61.5

Source: Returns of Information

### CHAPTER III

## COMPETITIVE ACTIVITIES OF CARNATION, ALPHA AND PACIFIC IN WESTERN CANADA

### 1. Prices of Evaporated Whole Milk

The practice in the evaporated milk industry, as indicated in the price lists of manufacturers, submitted to the Director, appears to be to sell evaporated whole milk on the basis of delivery to the customer. The return of information of Alpha states that its prices are "delivered recognized wholesalers at their recognized locations" while the prices of Pacific are described "F.O.B. destinations". The price lists of Alpha and Pacific show only one scale of prices but Carnation has one price for carloads and a higher price for less than carload shipments. The usual practice in the industry appears to have been to charge customers the price prevailing at date of shipment.

The cost of transporting evaporated milk from producing plants to areas of consumption forms a substantial part of total costs when shipments have to be made for a considerable distance. The structure of prices in the evaporated milk industry appears to have had its basis in the costs of manufacturers in Central Canada as the lowest prices are reported for the central parts of Ontario and Quebec with higher prices for areas distant from those centres. Alpha and Pacific appear to have their price structures conform to those of eastern manufacturers which means that they have the benefit of the element charged for freight in the prices prevailing in the markets nearest to their plants.

There was an upward change in the prices of evaporated whole milk in October 1959. Carnation's carload prices for evaporated whole milk, per case of 16 oz. cans, for the territories listed below were as follows after the change in prices:

Southern Ontario, including Sault Ste. Marie, Sudbury and North Bay	\$ 6.40
Province of Manitoba	7.05
Provinces of Saskatchewan and Alberta and interior points in B.C.	7.20
Coastal points in B.C.	7.15

Alpha and Pacific had the same list prices as Carnation for territories in Western Canada to which they made shipments.

Although Carnation's prices in Western Canada were higher than its prices in the territory nearest to its Aylmer, Ontario plant the differences were less than the transportation costs per case.

From information as to freight rates in 1959 given in Carnation's return of information, it is possible to relate the freight cost per case on shipments of evaporated whole milk to Western Canada to the additional return received in the prices charged over the price in the southern Ontario zone.

Table 10

Freight Costs per Case, Evaporated Whole Milk,  
on Shipments from Aylmer, Ontario and Differences  
in Prices Compared with Southern Ontario Zone,  
October 1959

	Lowest Freight Cost <sup>(1)</sup> per Case	Price Advance per Case over Southern Ontario Zone
	\$	\$
Toronto	.10	-
Winnipeg	.88 - .98	.65
Regina	1.14 - 1.24	.80
Calgary	1.25 - 1.29	.80
Vancouver	1.01	.75

(1) A range in rates indicates the difference between all rail and combined water and rail shipments.

Source: Carnation's Return of Information.



2. Special Promotions, Discounts and Deals  
by Alpha, Carnation and Pacific

In the questionnaires sent to Alpha, Carnation and Pacific the Director requested details of special promotions, discounts and deals which were used in the period January 1, 1959 to June 30, 1960.

The following summary of the information obtained in response to this question is given in the Statement of Evidence:

" . . .

43. Alpha made a lengthy reply to this question and it will not be quoted here. In summary this reply showed:-

- (a) Alpha promoted its produce through use of general advertising media.
- (b) Alpha participated in co-operative advertisings. In recent years and up to June 30, 1960, as a result of entry into Alpha's main sales territories of new large chain operations, average per case expenditure on co-operative advertising was growing.
- (c) Alpha has packed private label evaporated milk on which it gives an allowance and stands prepared 'to pack a private label for any recognized wholesale firm that asks for it'.
- (d) Alpha has had a sales staff and it has promoted its evaporated milk in various other ways, with one exception, all of them involving comparatively little expense to the organization.
- (e) The exception noted in (d) above was with respect to a special promotion in British Columbia in early 1960. This affair will be described in some detail later in this statement.

44. In its return of information Alpha said it had not promoted sales 'by special price allowance to certain wholesalers in some areas'.

45. Carnation's reply to this question was brief:-

'On April 1, 1959, this Company commenced a cooperative advertising program in Saskatchewan.

On July 1, 1959, this Company commenced a cooperative advertising program in the balance of the Prairie Provinces. All such cooperative advertising programs ceased as of July 1, 1960. Payments were on the basis of ten cents per case of evaporated whole milk purchased for two advertisements during every three-month period. The programs were available to every retailer of evaporated whole milk. This Company had no other special promotions during the periods in question'.

In oral evidence Mr. Lang said that Carnation's cooperative advertising programme was in effect in British Columbia for a time prior to July 1, 1960 (Ev. T. p. 34).

46. Pacific's reply to the question is quoted:-

'23. All advertising allowances, promotions and special discounts in effect during the period January 1st, 1959 to June 30th, 1960, are listed below:

- (1) Advertising allowance of five cents per case for one advertisement and ten cents per case for two advertisements in newspapers and/or handbills computed on basis of quarterly purchases.

To retailers, department stores, chain stores or their headquarters interests.

Region - All trading areas.

Put into effect July 1st, 1959, discontinued June 30th, 1960.

- (2) In store working display or demonstrations with or without newspaper advertising during period of January 1st, 1959 to June 30th, 1960. Demonstration costs, operator and materials used, borne by the company.

Region - All trading areas.

- (3) Quantity purchasing discount of ten cents per case to wholesalers buying in lots of not less than five thousand cases, payment in ten days, delivery at our convenience, during period January 1st, 1959 to June 30th, 1960.

Region - Vancouver area.

- (4) Co-operative advertising and merchandise package deals to chain stores for a term promotion at a price based on number of stores participating, type of promotion scheduled whether it be newspaper, handbill, window banner, radio or T.V. sponsored with or without floor or end aisle displays or a combination of any of all media or a single component.

Region - Prairie trading area.

- (5) Storage and handling allowance on carload lots to wholesalers in Alberta, Saskatchewan and Manitoba.'

...''

(Statement of Evidence, pp. 21-22)

3. Carnation's Concern over its Position in Western Canada and the Activities of Alpha and Pacific

Carnation's view of its position in Western Canada at the beginning of 1959 is reflected in a report for January 1959 apparently prepared in Los Angeles, California by Mr. W.H. Crockett, described in the evidence as a director and officer of Carnation Company Limited, and the officer to whom the general manager in Canada reported (Evidence, T. p. 13). The following are excerpts from Mr. Crockett's report:

"Competitive Activity:

Alpha

Evaporated Milk. An aggressive program continues to crown our share in the West. An introductory media campaign in British Columbia

is underway with good progress reported on a 50¢ per case jobbing allowance.

. . .

Pacific

Evaporated. Strong regional support in Western markets. Stepped up consumer advertising to meet new Alpha competition in British Columbia.

. . .

General:

While our losses in the West of recent years are of deep concern, our opinion holds that our share of losses may be contained. We continue to watch our sales in the area closely, in hopes that our continuing change in strategy will be reflected in more consumer sales."

(EMI 381A, 9-17)

Carnation's concern with competitive activities of Alpha and Pacific in the Prairie Provinces and in British Columbia continued to be reflected throughout 1959 in reports prepared by officers of Carnation. The following is contained in a report of Mr. Crockett for February 1959:

"COMPETITIVE ACTIVITY:

. . .

Alpha:

Evaporated Milk. Continues to be aggressive in all markets. British Columbia introduction making progress, though meeting heavy resistance from Pacific. A 50¢ per case Introductory Buying Allowance, plus Special Cooperative Ad Allowances, are being used.

. . .

Pacific:

Evaporated Milk. Aggressively resisting British Columbia introductory efforts by Alpha. Active

in all Prairie markets with strong media support plus cooperative advertising.

. . .

PRAIRIES:

. . .

General

While it is still early in the year, there appears to be some grounds for feeling that the improved trend towards reducing our losses that developed in the last half of 1958, is continuing in the Prairies.

Initial trade contracts on our cooperative ad test in Saskatoon would suggest general trade acceptance of our program."

(EMI 370A, 35-45).

The following appears in Mr. Crockett's report for April 1959:

"COMPETITIVE ACTIVITY:

. . .

Alpha

Evaporated Milk. Continues to be aggressive in all markets. British Columbia introduction making progress, though meeting heavy resistance from Pacific. Special Cooperative ad allowances are being used, with top retail accounts.

Pacific

Evaporated Milk. Aggressively resisting British Columbia introductory efforts by Alpha. Active in all Prairie markets with strong media support, plus cooperative advertising.

. . .



## REGIONAL DEVELOPMENTS

. . .

(Winnipeg - Regina - Calgary - Saskatoon - Edmonton)

### PRAIRIES

#### General:

Conditions in the Prairies are rather mixed. Both Alpha and Pacific are extremely active with Pacific retaliating against Alpha's bid for the British Columbia market.

Although it is still too early to evaluate, there is indication that our cooperative advertising test in Saskatoon is having its desired effect.

#### (Edmonton-Calgary)

In Alberta, however, the struggle for position among the 'chain operators' has generated 'price cutting' through 'special week-end features'. Cooperative advertising payments by both Alpha and Pacific resulted in their being selected for Special Features, to Carnation's detriment [sic]. We should consider extending our cooperative test to this area at an early date.

. . .

### BRITISH COLUMBIA:

#### Vancouver:

Sales Position, -11% (-5,180 cases). This trend is not good. Toronto personnel is spending next 10 days in the area reversing our position.

At first report we are the casualty thus far of the struggle between Alpha and Pacific as Alpha enters the British Columbia market. Cooperative advertising offers by both Alpha and Pacific are resulting in 'price cutting' on these brands in which we do not always share. Our

men have 'talked' an equal price for Carnation in many instances, but exclusive week-end features through cooperative advertising have worked against us. We are 'on it'."

(EMI 360A, 46-55)

There was a reduction in the price of evaporated whole milk in May 1959. In a report dated May 20, 1959, Mr. Lang, Vice-President and General Manager of Carnation made the following reference to the price reduction:

" . . .

The price decrease has reflected in all the labels except Farmer's Wife<sup>[1]</sup>. (As you know Farmer's Wife increased their price 40 cents a month ago). Probably Farmer's Wife will also be reduced shortly. I think there was some disappointment on the part of our western friends regarding this decrease. It may help to convince them that deals and co-op advertising do not pay.

. . ."

(EMI 141C, 62-64)

Mr. Lang gave the following evidence about this paragraph in his report:

" . . .

Q. Well, will you look at the last paragraph on the first page? Do you recall why you wrote that sentence:

'It may help to convince them that deals on co-op advertising does not pay'.

What was the connection between a price decrease and this particular thought of yours as expressed in that sentence?

[1] Farmer's Wife is the brand name of evaporated milk marketed in Canada by Cow & Gate (Canada) Limited.

A. I guess we knew we were not competitive in many respects with them, that the trade was for some reason pushing their brands. This comment, I suppose, was just a side comment that I hoped this would help to convince them and I would assume the way it would convince them would be they didn't have as much to fool around with in buying co-op advertising etcetera."

(Evidence, T. pp. 45-46)

Carnation's plans to deal with competition considered to arise from activities of Alpha and Pacific were apparently prepared at a meeting at the parent company's head office in Los Angeles in the latter part of May or early June, 1959.

A letter of June 3, 1959 from Mr. Crockett to Mr. Lang contains the following:

". . .

In a telephone conversation with you last week, I indicated that I was scheduled to meet with the Executive Committee on Thursday to discuss with them our Canadian Progress Report.

As was anticipated, the subject of our problems in Western Canada came in for considerable discussion, and during this time, I pointed out to the Committee (as I advised you I would), that orthodox approaches over the years had not successfully met competitive problems and that I really felt that we should move in a different direction if we were to be successful in meeting the current stepped-up activity of competition, particularly in British Columbia.

Based on advice from Bill Spratt and yourself that Alpha was definitely on a cooperative advertising program in British Columbia, I made the recommendation that we meet this situation by extending our present cooperative advertising test in Saskatchewan to British Columbia.

I pointed out further that such action by us would most likely result in a retaliation by Pacific in the Winnipeg area. With Alpha already in Winnipeg I felt further that we should keep the initiative from Pacific by offering our cooperative advertising there.

This left only Alberta uncovered and with our deteriorated position there in Alpha's home territory, I also recommended as step No. 3, that we extend the allowance to Alberta.

I pointed out to the Committee that Alpha was now sufficiently committed to a costly introductory program in British Columbia and with Pacific faced with the necessity of meeting this threat, that it was a most opportune time for us to initiate the program I outlined.

I also cautioned them that there is a calculated risk involved in that Pacific and Alpha will not choose to meet our program in their home territories, or, they might choose to go the 'package deal' route. In either case, there would be certain obvious accruals to our advantage.

. . .

After considerable discussion, we received approval to extend our 10¢ per case advertising allowance as under test in Saskatchewan to all of Western Canada from the Lakehead to British Columbia. This to be effective the start of the next quarter, July first.

. . ."

(EMI 136C, 67-68)

The term "package deal" which appears at various places in the documentary and oral evidence in the inquiry was not given a precise meaning. The following description of the type of promotion referred to as a "package deal" appears in the evidence given by Mr. Wilson, Assistant Sales Manager, Pacific:

"A. Mr. Chairman, a package deal is the term used amongst usually chain outlets where they have a prescribed formula, usually three or four plans, and it is either package plan 1, 2, 3 or 4. Package plan might be for 'X' number of distributors. They would promote a product on television, radio and give it newspaper advertising and maybe a cut price, plus a floor display on the floor for so much money. Then for a lesser price they might just give a newspaper advertisement plus a floor display."

(Evidence, p. 68)

Mr. Lang wrote to Mr. Crockett on July 31, 1959 and made the following references to competition in Western Canada:

" . . .

We are in an unusual position in that in some areas, particularly in the west, we are being outspent by competi-

tion in consumer advertising and coupled with this we are being outspent from a medical promotion standpoint by Cow & Gate. . .

ALPHA has package deals in Alberta and Saskatchewan in order to meet our co-op advertising allowance.

PACIFIC is meeting us in British Columbia, but we have not received details as yet as to whether they are using exactly the same terms as we.

. . . "

(EMI 129, 81-83)

Mr. Crockett's report for June 1959 contains the following comments on competition in Western Canada:

" . . .

#### COMPETITIVE ACTIVITY

. . .

Alpha: Continues to be aggressive in all Western Canada. The major introduction effort into British Columbia market seems to be leveling off. Continues to make special offers to selected retailers, including dealer premiums. Reported to be meeting our 10¢ per case cooperative allowance.

Pacific: Aggressively resisting Alpha's introductory efforts in British Columbia. Reported to be meeting our 10¢ per case cooperative advertising allowance. Sustained advertising in Prairie markets.

. . .

#### PRAIRIES. . .

##### General:

The situation in The Prairies continues to be a problem. Feel that our recent extension of cooperative advertising to cover the West will have an accumulative, corrective effort by the year's end. Meanwhile, we will have to crowd our problem areas with all we have.



Vancouver:

. . .                   The extension of our cooperative advertising program should again make us competitive in this market. The introductory efforts of Alpha's and Pacific's retaliatory program has squeezed us on retail prices and shelf position.

. . ."

(EMI 352A, 73-80)

In a letter of August 6, 1959 to Mr. Lang, Mr. Crockett wrote:

"This will acknowledge your Monthly Report of July 31st.

Like yourself, I am concerned about our share of industry drop. The compensating thought is that according to industry share last year we were exceptionally high as compared with previous years for the first 6 months, getting as high as 66%, which was compensated by dropping down to 58% one month in the latter part of the year, so there may be some adjustment factor involved. However, we should continue to crowd the matter, to be sure that this comes to pass.

. . .

Your comments relative to competition have been duly noted, and I believe in previous correspondence we have reached an agreement that we should pursue a course of action in bringing them 'to heel'.

. . ."

(EMI 128, 95)

Mr. Lang was asked in evidence if he knew what was meant by Mr. Crockett's expression "bringing them to heel".

"Q. Do you recall what the agreement was 'in bringing them to heel'?

A. No, I don't know what it is. The only thing I can think of we put in our co-operative advertising programme to meet this thing."

(Evidence, T. p. 51)

Mr. Crockett's report for August 1959 includes the following comments on conditions in Western Canada:

"Competitive Activity . . .

Alpha: Aggressive in all Western markets with consistent media and sales support. British Columbia introduction is meeting strong resistance from both Pacific and Carnation. Consumer sampling is under test in Vancouver neighborhoods.

Pacific: Still aggressive in all Western areas. Sales and media support have been materially increased in British Columbia to stop Alpha's introduction.

. . .

GENERAL SUMMARY . . .

West:

Our position in the West is certainly deteriorating at a slower rate than in years past. We anticipate that our Cooperative Advertising Allowance Program, which makes us competitive for the first time in several years, will enable our superior advertising and sales efforts to reverse the downward trend of recent years.

. . . "

(EMI 334, 96-105)

The following extracts are taken from Mr. Crockett's report for September 1959:

"COMPETITIVE ACTIVITY:

. . .

Pacific Aggressive in all Western areas, like Alpha. Strong media activity in British Columbia to slow Alpha's introductory efforts, plus counter

activity in Alberta (Alpha's 'home' territory).

. . .

## GENERAL SUMMARY

. . .

### General:

We continue to enjoy good support in all areas excepting the West. Here we are building back trade support with our Cooperative Advertising program.

Sponsored labels are going to be more of a 'thorn in our side' as all voluntary groups are combating chain labels with their own sponsored label.

West: Our position in the West is not responding as I would like. Analysis of a 12 month recovery total indicates a decelerated loss. We expect that when Cooperative Advertising and Rural advertising takes hold, the down trends of some years standing will be reversed.

## REGIONAL DEVELOPMENTS

. . .

### Calgary:

Sales Position, - 11% (-4,871 cases).

A little improvement in a most competitive retail market where competition has been favored because of Cooperative Advertising and Home product. Our new Cooperative advertising program will help.

### Edmonton:

Sales Position, - 6% (-5,404 cases).

A little improved. Like Calgary, local competition has been favored with 'Special Price Features' in a 'hot' retail market because of Cooperative Advertising and Home

product. This is now beginning to correct, as our Cooperative Advertising program begins to take hold.

BRITISH COLUMBIA (Vancouver)

1. Share of National Market 22.7%  
Monthly per Capita purchase rates, month of June, 1959 2.0 cans
2. Latest International Surveys Limited Report, (2nd Quarter, April-May-June, 1959) Share of Market Position.

	<u>2nd. Quarter</u> <u>April-May-June '59</u>	<u>1st Quarter</u> <u>Jan. Feb. Mar. '59</u>
Carnation	9.1%	9.3%
Pacific	77.9%	77.3%
Farmer's Wife	1.2%	3.2%
Alpha	1.4%	1.4%

Vancouver:

Sales Position, - 14% (- 13,504 cases).

As expected, our losses may be contained. We have been losing ground all this year, beginning when Alpha entered the British Columbia market. Alpha's (50¢ per case) introductory offer and Cooperative Advertising support, plus strong media effort was met by Pacific, resulting in 'Special Feature Prices' for both brands that cut into our share.

Our current program and the cut back to a sustaining program by Alpha and Pacific has resulted in our containing our losses in recent months. A full recovery is not expected.

Some additional special activity may have to be initiated to 'bolster' our position. Under review."

(EMI 325A, 110-118)

Continuation of competitive activity on the part of Alpha and Pacific was referred to in Mr. Crockett's report for October 1959, from which the following extracts are taken:

"COMPETITIVE ACTIVITY:

. . .

Alpha: Continues to be active in all Western markets. Consumer pressure is sustained by well-balanced media effort. British Columbia introduction is slow.

Pacific: Aggressive in all Western areas, like Alpha. Strong radio and T.V. spot activity in British Columbia to slow Alpha's introductory efforts, plus counter activity in Alberta, (Alpha's 'home' territory)."

(EMI 317, 122-129)

It appears that in December 1959 Carnation received information that Alpha would start some special promotions at the beginning of 1960. Reference to the promotions was made as follows in Mr. Crockett's report for November 1959, which is dated January 4, 1960:

"COMPETITIVE ACTIVITY:

. . .

Alpha: Prairies: A special 5¢ per case jobber offer, effective January 1 has been made. In addition, they will pay Direct Buyers' Sponsored accounts 1% ( $7\frac{1}{2}\%$ ) 'volume rebate' for two features, plus buying 2 additional features at the going rate of package deals. We estimate these promotional allowances to total a minimum of 15¢ per case. We will have to watch the effects of these offers carefully.

British Columbia: Effective January 1, Alpha will offer a special '2¢ off' of label. This will be handled by a 96¢ per case discount on the invoice.



. . .

## REGIONAL DEVELOPMENTS

. . .

### PRAIRIES:

. . .

#### General:

Satisfactory acceptance of our Cooperative Advertising Program, we feel, is helping to offset competitive activity. The move by Alpha to meet our plan suggests our program is being felt.

. . .

#### Vancouver:

Sales Position, - 11% (- 12,221 cases)

Alpha's introductory and Pacific's retaliatory activity hurt us early this year.

Too late to recover now. Activity planned for the rural areas in 1960 should help."

(EMI 256, 136-146)

The "'2¢ off' of label" offer referred to in Mr. Crockett's November report will be described more fully in the next chapter. The attention which Carnation gave to promotional activity of Alpha is indicated in a letter of December 11, 1959 which Mr. Lang wrote to Mr. Crockett:

"Since receiving the announcement of ALPHA's new advertising and promotion allowance program, copies of which are attached, Bill Spratt and I have had an opportunity to consider the matter and at least make a preliminary investigation. Time has not permitted us to prepare a definite recommendation.

ALPHA seems to be becoming increasingly active in their promotion in the Prairies and, of course, in B.C. they have been pulling just above every possible move they could make. The crowning blow is the possibility of a '2 cents off label' shortly after the first of the year.

We feel that the time is getting close to when we will have a knock-down drag out competitive situation in the West. This situation has been brewing ever since our spread between the eastern zone price and the western zone price became greater than ten cents. They have had more money to play with and are becoming increasingly liberal with their promotion programs.

We feel that it is essential to meet the five cent per case sales promotion allowance, which as we understand it goes to every direct buying customer. Our first impression was that we should call it a sales promotion allowance and take it off the invoice. However, there is a possibility that some of the trade may prefer to get a cheque at the end of the year and, therefore, we feel that we should follow ALPHA in making payment at the end of a quarterly period or a year.

This does not make us completely competitive and we would, therefore, like to increase the ten cents per case allowance to fifteen cents and to justify this increased payment ask for the two ads during the quarter as we now specify but in addition ask that one be part of a package deal worded something like this: ('Fifteen cents per case for two ads one of which is a part of a complete feature promotion.'

. . ."

(EMI 118, 149)

The evidence which has been reviewed in this chapter makes clear that Carnation was concerned throughout the year 1959 about its sales position in Western Canada and about how this position might be affected by competitive activities of Alpha and Pacific.

## CHAPTER IV

### THE "PRICE WAR" IN THE SALE OF EVAPORATED WHOLE MILK IN WESTERN CANADA

#### 1. Alpha's "Price Off" Deal of Two Cents per Can

Reference has already been made to the fact that in the latter part of 1959 Carnation obtained information that Alpha would be introducing some new promotion programmes in the Prairie Provinces and in British Columbia which would be effective in January 1960. One of the programmes involved the distribution of a certain quantity of tall cans of evaporated whole milk bearing labels with a notation "2¢ off".

Mr. E.A. Johnstone, General Manager of Alpha, gave evidence in the inquiry that the Central Alberta Dairy Pool had shipped Alpha evaporated milk to British Columbia in 1938 but had withdrawn from that market because of competitive conditions in 1939, and did not attempt to resume sales of Alpha milk to British Columbia until February 1959. Mr. Johnstone testified that Alpha attempted to sell its evaporated milk at the same price as Pacific and Carnation who were established in that market as it was considered that any reduction in the price of Alpha milk would be met by competitors. Under these conditions partial distribution of Alpha milk was secured in British Columbia but two of the largest wholesalers did not accept Alpha's evaporated milk for distribution to their customers (Evidence, pp. 94-95). According to Mr. Johnstone's evidence, Alpha's lack of success in getting the largest wholesalers in British Columbia to handle its evaporated milk led to the "2¢ off" of the label promotion:

" . . .

MR. POWELL:

- Q. Would you describe what steps you took with respect to the introduction of the Two Cents off the label promotion in Western British Columbia?
- A. The steps we took were roughly this. That it was the suggestion of a broker who had more years of experience in that field than we had that there was something holding us back from getting distribution and he felt a promotion like this which is an ordinary promotion for a new product in a new market, that it would likely give us general distribution. A promotion of this kind would. And it is not unusual that when you put on a

special promotion that you advise your competitors that you are proposing to put on a special promotion so they would know it is a promotion and that we did and in the case of one, we were given this answer: 'Well, we haven't done too well so I guess we will just sit by and see what happens'.

Q. Would you be more specific? There are two principal competitors. This one was who?

A. That one was Carnation. They just said, 'Okay, you put on your promotion but, ' they said, 'we haven't been doing anything out in that market so I guess we will see what you can do', because they are only selling one to five to the other brand now.

Q. Who in Carnation told you that?

A. That was Mr. Lang.

Q. Was that by telephone or by personal conversation?

A. That was by telephone, I think, but it could have been by personal conversation and the other company objected to our promotion but we explained to them that it was not an unusual promotion and that it would give us distribution. We agreed to limit our quantity that we would put into this promotion. As a matter of fact, we agreed to cut it in two.

Q. Who were you talking to in Pacific?

THE CHAIRMAN:

The other competitor was the Fraser Valley Milk Producer's Association?

A. Yes, it was. It was Mr. McDonald, because at that time Mr. Atkinson wasn't appointed general manager.

Q. This is before November, 1959?

A. No. Just a minute, I was out in British Columbia -- I haven't got it in my notes here but I was out in British Columbia last year in October, I think. It would be the front part of November, I guess -- no, it was the 22nd of November I went to Vancouver. Here is my note.

MR. POWELL:

Q. You took the matter up with Mr. McDonald?

A. Yes. As a matter of fact it was before we told Mr. McDonald he found out about it. That we were putting on a promotion, so he asked the particulars about it and we gave him the particulars. That our quantity was going to be so many cases.

Q. How many cases?

A. Thirty thousand cases is what we calculated. I guess our Sales Department figured we should have more than that but we pulled it back to thirty thousand cases and it was the thirty thousand cases we used with them in our initial discussion and they thought the quantity was too large and so we talked it over and agreed we would pull it back to fifteen thousand cases.

Q. How long did you figure these thirty thousand cases would be on the shelves?

A. We thought two months. We agreed if there was anything on the shelf at the end of February, we would take it off the shelf and replace it with another label.

- . . .

Q. What transpired then between the time you talked with Mr. McDonald in November, 1959 and the end of December, 1959?

A. Nothing, except that the Fraser Valley did advise us they were going to treat it as a promotion.

Q. That meant they would not meet it?

A. We had a meeting with them and they were going to treat it as a promotion.

. . . "

(Evidence, pp. 96-99).



Mr. Johnstone said later in his evidence that shipments of the milk labelled "2¢ off" were made to wholesalers in British Columbia in the latter part of December 1959. Mr. D.A. McDonald, Sales Manager of Pacific, testified that Alpha's use of the "2¢ off" of label was the first instance, to his knowledge, of this type of promotion in the sale of evaporated milk. He corroborated Mr. Johnstone's evidence that Pacific had indicated that Alpha's offer of "2¢ off" would not be met by Pacific. (Evidence, pp. 26-29).

Carnation's reaction to Alpha's promotion plan to offer evaporated milk with "2¢ off" labels in British Columbia is indicated in the following letter, dated December 17, 1959 from Mr. Lang to Mr. Crockett:

"We have received definite confirmation from the Trade that ALPHA is offering in the entire Province of British Columbia a dollar allowance off the invoice on their evaporated milk. We estimate that there are about 10,000 cases involved and all of this milk carries two cents off label stickers. The orders are being taken for delivery the first week in January.

Apparently this is the first phase of a three phase marketing scheme for 1960. Since my letter of December 16 the above is the definite information needed and at the present time it is recommendation [sic recommended] that we, as soon as possible, advise the Trade that we will allow one dollar per case allowance off the invoice. We feel that there should be no time limit on our offer and that from a competitive standpoint we should take the stand that this offer will remain in effect until the two cents off milk has been pretty well eliminated from the shelf.

We have no indication of what PACIFIC will do, but I would guess that they are waiting expecting that we will meet this price and they will then meet us. When this happens we may be reasonably sure that they will also retaliate in the Prairies with the same offer and we should be prepared to meet them in the Prairies.

. . . "

(EMI 117, 150)

Steps which might be taken by Carnation were reviewed further in a letter of December 22, 1959 from Mr. W.G. Spratt, Sales Manager of Carnation, to Mr. Crockett:

"Re: Alpha - British Columbia Deal

We have reviewed the Alpha program and their special deal pack covering 2¢ off label along with possible approaches we could take.

It had been reported that Alpha are charging direct trade \$6.19 which is less than the regular list British Columbia price. According to our District Manager, Alpha are not offering any other deal inducements such as buying package deals, ads. or display support. This, of course, could change very quickly. According to Alpha's bulletin they are supporting a special program with newspaper and radio, to what extent we do not know.

The objective of Alpha is to extend their distribution while developing a consumer following. The latter is a very effective approach to gain consumer support. Up to this date Alpha had limited distribution and no support from Kelly Douglas, largest wholesaler in British Columbia and headquarters for Super Valu and Red & White Stores. Sturrock reports that Kelly have listed Alpha because of the off label deal. They feel they can have no competitor with an evaporated milk, particularly a first line milk, at lower prices than they can offer.

Based on conditions as we know them now, we are convinced that we must be competitive at shelf level, therefore, we will have to reduce the price of Carnation by \$1.00 per case, either through a straight reduction from this price or by a special allowance off the face of the invoice.

Handling in this manner we can be reasonably sure that it will be reflected to retail shelf price.

Several other approaches were considered in the interest of increasing our incentive program over and above the 10¢ a case Co-op Advertising Plan.

..."

The letter then goes on to describe several other types of promotional programmes and continues:

"..."

In summarizing all plans, with the exception of \$1.00 reduction or allowance on our current price and maintaining our present Co-op Advertising Plan, we decided to shelve all other recommendations temporarily until we have had

an opportunity to evaluate the effect Alpha's deal will have on our volume. Furthermore, we would like to see Pacific make a move. They have more at stake in British Columbia than we have.

. . ."

(EMI 114, 174-176)

Mr. McDonald of Pacific testified that he recalled a telephone conversation with Mr. Lang of Carnation, which, according to the records of Carnation appears to have taken place on January 4, 1960, and in which Mr. Lang inquired whether Pacific was going to meet the "2¢ off" offer of Alpha in British Columbia. Mr. McDonald said that he informed Mr. Lang that Pacific did not intend to do so and that if Pacific made any change in its prices of evaporated milk it would follow the usual form and apply in all areas in which Pacific sold evaporated milk. (Evidence, pp. 32-33).

When the Alpha promotion of 2¢ off label in British Columbia became effective on January 4, 1960, Carnation took action along the lines indicated in the letters quoted above and reduced its price of evaporated milk by \$1.00 per case not only in British Columbia where Alpha's promotion was in effect, but also in Alberta where the promotion did not apply. Carnation's customary pricing structure had one price zone for the coastal region in British Columbia and another price zone which included the Provinces of Saskatchewan and Alberta and the remaining area in British Columbia. The reduction in the price of evaporated milk on January 4, 1960, by Carnation in Alberta and not in Saskatchewan was a departure from Carnation's usual practice of having the same price prevail in Alberta and Saskatchewan.

Mr. Lang gave the following evidence in regard to the price reductions made by Carnation in British Columbia and Alberta on January 4, 1960:

"Q. Were you meeting the competition when you lowered the price \$1 in Alberta?

A. Yes.

Q. How?

A. Well, in this kind of commodity marketing situation if someone has got a pretty well established market and he is going to come over here and try to take this one, if you do not have much money you can let

him come in and sell for \$1 and he will sell and if you are selling 10,000 cases and he comes in and only sells 1,000 you will have to retaliate by meeting him in his market.

Q. Did Mr. Johnston [sic] ever ask you why you dropped the price in Alberta?

A. He may have and I could have answered him with any one of two or three reasons.

Q. Well, why did you drop it in Alberta.

A. There again is a couple of possible answers. Do you want both of them?

Q. Yes, and the right answers.

A. Well, there are a lot of people involved in a price change such as this and each knew what his own reasons were.

Q. Well, you are the managing person in Canada, You would be advised.

A. I would say we maybe had two reasons. One was my first impression that the British Columbia zone does not cover all of British Columbia and the Alberta, Saskatchewan and British Columbia overlaps so that is probably one reason, at least that is the reason that I thought and the other reason was, and probably the main one, that here was a company with an established market coming in to pick off somebody else's established market and we had to meet that price and we could not just meet it in the market where we had some volume; we had to meet it in theirs too.

Q. You say you had to meet it in theirs?

A. If you are selling, say, 100,000 cases of a product in Ontario and I come into your market and I am going to sell 1,000 cases a month and you are selling 100,000, I can sell at \$1 less. It is only costing me 1,000 a month. I have out west far more business and I can go on indefinitely selling at that and I will keep it up until I take your market."

(Evidence, T. pp. 58-59)



Earlier in his evidence Mr. Lang said that he telephoned Mr. Johnstone at Alpha's office in Red Deer, Alberta "to tell him that we were meeting that two cents off and chopping our price". (Evidence, T. p. 12). Mr. Lang also gave the following testimony:

" . . .

Q. Do you recall that your company changed its prices in western Canada, that is, in British Columbia and Alberta on the 4th of January, 1960?

A. Yes.

Q. Can you tell the Commissioner what led up to that change as far as your company was concerned, what the circumstances were?

A. Well, of course, there were a lot of circumstances. There had been a lot of -- over the years there had been a lot of competitive activity out there. By 'competitive activity' I mean conditions where developing where -- well, can openers were being sent out and co-operative advertising allowances, buying package deals and giving away lawn chairs and in some areas we would be not competitive for the reason that we did not even know but we thought there were things like that. Well, of course, we were aware of this situation and then Alpha label in Vancouver came out with a two cents off on each tin and we just couldn't let that condition exist because we just would not sell any milk so we just dropped the price.

Q. In what area did you drop the price?

A. We dropped it in British Columbia and Alberta.

Q. Was that Alpha two cent off deal in Alberta?

A. No.

Q. Was Alberta a price zone of its own in the ordinary pricing schedules of your company ?

A. No, it was not. The price zone was partly in British Columbia and partly in Saskatchewan.

. . . "

(Evidence, T. pp. 8-9)



Carnation's action in reducing the price of evaporated milk by \$1.00 per case in British Columbia and Alberta on January 4, 1960 was followed, on the same day, by action by Pacific which reduced its prices of evaporated milk by \$1.00 per case not only in British Columbia but throughout Western Canada. Mr. McDonald of Pacific gave the following evidence in regard to the action taken by Pacific:

- "Q. Mr. McDonald, do you recall that the Alpha Two Cents off the label deal became effective on January 4th, 1960?
- A. Yes.
- Q. And that is correct. It did go into effect that day?
- A. Yes.
- Q. By that time had Alpha stocked its wholesalers and so on?
- A. That is the information I had. It was available here in British Columbia.
- Q. The effective date was January 4th for the offer to the public?
- A. Yes, sir.
- Q. Pacific did not change its price because of that particular introduction?
- A. Not because of that particular introduction.
- Q. Do you know what the next price movement in the British Columbia market on evaporated milk was?
- A. There was a reduction made by the Carnation Company in British Columbia and Alberta of One Dollar per case.
- Q. There was a change of a dollar per case in Alberta and British Columbia, made by the Carnation Company on January 4th?
- A. To the best of my knowledge it was on that date.
- Q. And by reducing the price by One Dollar in Alberta

and not reducing the price by One Dollar in Saskatchewan, had Carnation followed a different price practice than usual?

A. Yes, Sir. It was unusual.

Q. And Alberta and Saskatchewan are ordinarily in the same price zone are they?

A. Yes, Sir.

Q. And at the end of that particular price movement, they were not?

A. No, Sir.

Q. That would be the situation. What was the next price movement in Western Canada on evaporated milk, to your recollection?

A. We reduced to be competitive. We followed our usual policy of reducing our price in Western Canada One Dollar per case to be competitive with Alpha and Carnation in British Columbia.

Q. And you reduced how far back?

A. In Western Canada. We followed our usual custom of the reduction being general. We did not confine it to Alberta and British Columbia.

Q. You say 'your usual custom'?

A. When we make a price change, it usually covers our domestic market.

. . ."

(Evidence, pp. 30-31)

An attempt may now be made to summarize the price changes made by Carnation, Alpha and Pacific on January 4, 1960 and to describe the situation with respect to Alpha's special promotion of "2¢ off" in British Columbia. In order to secure the desired reduction of 2¢ per can in the retail price of its evaporated milk Alpha reduced its price to wholesalers in British Columbia for the 15,000 cases of specially labelled milk which it hoped to distribute in January and February, 1960. Carnation's action in making a general reduction in the price of evaporated milk of \$1 per case in British Columbia and Alberta led Alpha to make the same general reduction in the two provinces and Pacific made a general reduction of \$1 per case on January 4, 1960 in British Columbia, Alberta, Saskatchewan and Manitoba. The result of the price reductions by Carnation and Pacific in British Columbia was that Alpha's special

promotion of "2¢ off" ceased to be effective as the prevailing prices had been brought to the level which it had hoped to achieve with its special allowance on the 15,000 cases of evaporated milk. If Alpha wished to have consumers regard its "2¢ off" labels as meaning that a reduction of two cents was being made from the current prevailing price it would have to make a further reduction in its selling price in British Columbia of 96¢ per case, as there are 48 cans in a case. Mr. Johnstone of Alpha said that he pointed this out to Mr. Lang in a telephone conversation on January 4, 1960. Some testimony of Mr. Lang in regard to this telephone conversation has already been cited. Mr. Johnstone's evidence included the following:

"Q. Was it a long telephone conversation?

A. Not too long. He simply advised us that they were not going to treat our promotion in British Columbia as a promotion. That they were going to treat it as a price decline and they had reduced their price in British Columbia by One Dollar per case and they had also reduced them in Alberta by One Dollar a case at the same time.

Q. Did he ask for your reaction on that?

A. Yes, he did.

Q. How did he put to you the request?

A. He said, 'What do you think of that'?

Q. What was the implication you took from that remark?

A. I guess he wanted to know what we thought about it and this is what I said. I said, 'Well, far as British Columbia is concerned, although we had an indication from you that you would treat it as a promotion, we still agree that it is within your prerogative [sic] to interpret it as a promotion or take it as a price decline but that is for British Columbia'. I said: 'As for Alberta, you know there has been no change here and there is no promotion here and we consider that an unfair act because you are simply trying to hurt us' and then he said, 'What are you going to do about it?', and I said, 'Well, right now I feel this, that we have the right to complain about it' and I can't give you his reply. We did not fight over it on the telephone because there was no point in it. But we were very definite that we felt it was within their prerogative [sic]

to change their mind in British Columbia, but we felt cutting it One Dollar a case in Alberta was not fair and they gave as their reason this: (1) They said there are lots of things going on they did not like. and (2), which I guess was the first one, he said cutting it One Dollar a case in British Columbia isn't hurting us because he said 'You haven't got much business out there, so that is why we decided to include Alberta'.

Q. So it did hurt you?

A. So it did hurt us.

THE CHAIRMAN:

Q. He told you that?

A. Yes. And I said, 'That is not quite true, because with Two Cents off label, our price automatically has to go down two cents, so it is hurting us in British Columbia' and I can't advise you what he said to that but it is likely that the conversation ended about that point. Oh yes, I would say one thing more. I said, 'Well, Ted, you know that with a Two Cents off label, our sales for shelf stock in British Columbia automatically goes down another .96¢'.

. . ."

(Evidence, pp. 102-103).

According to the returns of information, Alpha and Carnation reduced their prices in the coastal area of British Columbia by a further 96¢ per case, effective on January 6, 1960, but Pacific did not do so. As Pacific evaporated milk sold in the largest volume in British Columbia its action in not reducing the price of Pacific milk to the level of Carnation and Alpha enabled the latter to secure some effect from its "2¢ off" label. Mr. Johnstone gave the following evidence:

". . .

THE CHAIRMAN:

Q. When all these reductions had taken place, was the result all three companies were selling at the same

price throughout Western Canada?

A. No, Pacific did not drop the second .96¢ per case.

Q. Anywhere?

A. Any place.

Q. But Carnation and your company did drop the Dollar and the .96¢ ?

A. Yes.

Q. In British Columbia and where else?

A. That is the only place .

Q. The only place you dropped the \$1.96 and the rest of Western Canada just the Dollar?

A. Yes. Actually, you see Carnation stopped our promotion to a degree because we weren't able to automatically reduce our price .96¢ in British Columbia. Had Pacific also dropped their price, we possibly would have had to drop ours another .96¢ in British Columbia but Pacific did not do it and that sort of established a little balance in the price situation in British Columbia. Our Two Cent off label program did not include Eastern British Columbia. Just Western British Columbia, the Okanagan and the West Coast. It did not include the Eastern part.

. . . "

(Evidence, pp. 105-106)

In making reduction in the prices of evaporated milk in Western Canada in January 1960, Carnation and Alpha continued the policy customary in the evaporated milk trade that products were sold on the basis of the price prevailing on the date of shipment . However, for the period January 4, 1960 to January 15, 1960 Pacific suspended its policy in this respect and, according to its return of information, accepted orders for evaporated milk "at prevailing price, on the basis of delivery when available".

The various changes in the price of evaporated milk in Western Canada which have been described above are shown in chronological order in the following table:



Table 11

Evaporated Milk Prices in Western Canada and  
at Toronto, Prior to and During Price War

(Price per Case)

<u>Date</u>	<u>Coastal District British Columbia</u> \$	<u>Alberta and Eastern B. C.</u> \$	<u>Saskat- chewan</u> \$	<u>Manitoba</u> \$	<u>Toronto</u> \$
Immediately Prior to Price War					
Carnation	7.15	7.20	7.20	7.05	6.40
Alpha	7.15	7.20	7.20	7.05	
Pacific	7.15	7.20	7.20	7.05	
Jan. 4, 1960					
Carnation	6.15	6.20	7.20	7.05	6.40
Alpha	6.15	6.20	7.20	7.05	
Pacific	6.15	6.20	6.20	6.05	
Jan. 5, 1960					
Alpha	6.15	6.20	6.20	6.05	
Jan. 6, 1960					
Carnation	5.19	6.20	6.20	6.05	6.40
Alpha	5.19	6.20	6.20	6.05	
Pacific	6.15	6.20	6.20	6.05	

Source: Returns of Information.

2. Shipments of Evaporated Milk to  
Customers in Western Canada  
During Price War

The price reductions put into effect in the four Western Provinces at the beginning of January 1960 by Carnation, Alpha and Pacific led to sharp increases in shipments to customers in those provinces in January and, to a lesser extent, in February 1960. The scale of the increased shipments can be seen by comparing quantities of evaporated milk shipped in each month with the corresponding month in 1959 and with total shipments during the year 1959.

Table 12

Shipments of Evaporated Whole Milk  
to Customers in Western Canada by  
Carnation, Pacific and Alpha

(No. of cases, 16 oz. cans)

British Columbia

<u>Period</u>	<u>Carnation</u>	<u>Pacific</u>	<u>Alpha</u>
1959	98,613	852,748	12,272
Jan. 1959	9,846	75,610	-
Feb. 1959	7,933	67,050	1,370
Mar. 1959	9,245	78,098	1,583
Jan. 1960	72,229	116,670	28,346
Feb. 1960	31,558	92,661	11,249
Mar. 1960	8,422	13,163	2,725

Alberta

1959	144,210	79,480	184,103
Jan. 1959	12,920	7,139	17,655
Feb. 1959	7,995	6,175	15,081
Mar. 1959	16,239	7,455	16,520
Jan. 1960	33,815	12,058	38,515
Feb. 1960	15,538	11,463	9,400
Mar. 1960	16,388	4,171	16,050

Saskatchewan

1959	87,948	59,478	97,210
Jan. 1959	11,036	5,965	9,295
Feb. 1959	7,847	4,744	9,078
Mar. 1959	7,653	4,835	7,661
Jan. 1960	24,814	15,398	22,457
Feb. 1960	4,041	8,213	7,641
Mar. 1960	6,641	2,650	7,070

Manitoba

1959	143,801	65,968	13,001
Jan. 1959	13,357	5,316	1,095
Feb. 1959	12,024	5,295	988
Mar. 1959	10,817	5,058	1,025
Jan. 1960	42,283	14,113	4,295
Feb. 1960	4,767	8,174	449
Mar. 1960	7,610	7,085	667

Source: Returns of Information.

It will be seen from the table of shipments that Alpha shipped considerably more evaporated milk to British Columbia than the 15,000 cases of milk labelled "2¢ off" which had been intended for the special promotion in British Columbia. Messrs. Marshall and Johnstone of Alpha gave the following evidence in regard to the distribution policy of Alpha in British Columbia during the price war:

"THE CHAIRMAN:

Q. While your Two Cents off Label promotion was finished, the goods were still selling at the same price?

[MR. MARSHALL]

A. That is right.

Q. How many cases did you finally dispose of at the Two Cents off the label?

A. It was still limited to fifteen thousand cases.

Q. Did you put out fifteen thousand cases?

A. Just a little over that.

MR. JOHNSTONE:

The whole program blew up and we thought we might as well get rid of these labels.

MR. POWELL:

Q. What do you mean the program blew up?

A. Carnation met our price and second price, so we did not have Two Cents off. Our prices were the same.

MR. MARSHALL:

Once the Two Cents off label stopped, we had a choice then of staying with the Pacific price or dropping our price .96¢ per case to stay competitive with Carnation.

Q. And you did that?

A. We did that."

(Evidence, pp. 132-133)

### 3. Discussions Among Carnation, Alpha and Pacific and Conclusion of Price War in Western Canada

Before the price war came to an end in March 1960 two meetings were held in which representatives of Carnation, Alpha and Pacific participated, and it is also shown by the evidence that some discussions were held by telephone. It also appears from the evidence that prior to the first meeting at which the three companies were represented officials of Alpha and Pacific met to discuss the situation created by the price war.

The first meeting of representatives of the three companies was held in Toronto on January 18, 1960. Mr. Lang of Carnation who attended the meeting with Mr. Crockett gave the following evidence about the manner in which the meeting came about:

"Q. Do you know how it came out that there was such a meeting?

A. I think I was in Montreal and Lyle Atkinson called and said that he and his board of directors were going to Red Deer to try to straighten out some of those misunderstandings with Ellis Johnston [sic] and his board of directors and I asked him if he thought I should be there because we were at least partly involved in this whole situation that had developed and he said no, he thought it would be better if just the two boards met and we could probably meet some time later.

...

Q. Well, to come back to the meeting of January 18th, what were the next steps in arranging that meeting? You had a discussion with Mr. Atkinson and the thing was that you would arrange to meet later. How did the arrangements develop?

A. Well, it is kind of hard - I would assume that probably Mr. Atkinson called me after that at this meeting and told me that they had called - I can recall at least someone told me, it must have been him, that they had quite a discussion without bringing up all these things that had been going on for the past years in the industry, buying package deals, rebates and allowances, etcetera, and that the matter was not settled by any means and then we talked about some time - I suppose during that conversation, that some-time when we got a chance the three of us should get together.

...

Q. Do you recall if somebody asked you specifically to arrange for this meeting?

A. I don't think Lyle said specifically for this meeting or I said it; I think we just knew that there were many of these things going on and there were chaotic conditions that had to be straightened out."

(Evidence, T., pp. 17-19)

In addition to the two representatives of Carnation the meeting on January 18, 1960 was attended by Mr. Atkinson of Pacific and Mr. Johnstone of Alpha. The latter said in evidence that in a conversation with Mr. Atkinson of Pacific, prior to the meeting in Toronto, Mr. Atkinson had told him that he would go any place to straighten out the situation and eliminate the loss being caused by the price war. (Evidence, p. 108).

Mr. Johnstone also gave evidence that both Pacific and Alpha were greatly concerned over the loss of revenue which resulted from the reduced prices of evaporated milk in Western Canada.

"A. . . . Mr. Atkinson was greatly concerned because he was just general manager of a producers' cooperative and it just simply meant that his members were taking One Dollar less for milk. We were greatly concerned too because we were a producers' cooperative so that anything that would eliminate a continuation of a loss would be of importance to us".

(Evidence, pp. 106-107)

Mr. Lang testified that the meeting on January 18 "was about everything involved with trade practices". (Evidence, T., p. 24). Carnation's purpose in having its representatives meet with those of Pacific and Alpha was described by Mr. Lang as follows:

"Q. What was the purpose of your company?

A. To try and correct some of the chaotic conditions that had developed in the industry.

Q. What were the general chaotic conditions?

A. I think the co-operative advertising, the consumer give-aways, the package deals.



- Q. Was the fact that there was a price cut of at least \$1 from Winnipeg west a matter of some importance in this general situation?
- A. Of course it was important in that it was a very costly deal. Of course it was important.
- Q. Was it the chief reason for the January 18th meeting?
- A. I imagine it would be chief one in that it was costing the most.
- Q. Was the purpose of the meeting related to this \$1 price decrease?
- A. Well, actually the purpose of the meeting was to try to correct some of these things that were going on."

(Evidence, T., pp. 20-21)

Mr. Lang was asked about what was discussed at the meeting on January 18 and the following matters are among those to which he referred:

- "Q. Well, then, will you tell the Commissioner, Mr. Lang, what took place at this meeting in your recollection?
- A. Well, each one brought up things that he thought were going on in trade practice, that either were hurting him or he wanted to know what was going on. He was trying to be competitive as we were. Some we didn't know what they were and some they didn't. I learned things there that we had never heard about.
- Q. Such as what?
- A. Well, we had always suspected there was some kind of an arrangement going on out west with a couple of buyers in Vancouver and Johnston[sic] brought it up that we had not heard about. He had found out from a customer that Pacific had some sort of a secret rebate with a couple of the customers out there. That was just one example."

(Evidence, T., p. 22)

"MR. POWELL:

Q. Did either Mr. Atkinson or Mr. Johnston[sic] approach you or Mr. Crockett with the proposition of what about the \$1 price decrease?

A. No, it was obvious they could see what about it. The price was there. We were meeting Alpha's two cents off.

Q. Did Mr. Atkinson put any such proposition as 'what can we do to fix things up so that the price can be restored to the previous level or normal level'?

A. Well, what can we do to straighten up some of these trade practices, that is what we were all concerned about.

Q. That proposition was raised by Mr. Atkinson at the meeting, was it: 'What can we do to get these things straightened out'?

A. I don't know. I would suppose so. I may have said the same thing or Johnston [sic] could have said the same thing. Anyone of us could.

Q. Did you each have separate things you wanted straightened out?

A. Well, for example, this one that Johnston [sic] brought up is a typical one, and, of course, we had problems out there. We have had them for years. We have known that some customers were promoting other brands and we were losing out badly and we know that if a customer has got a nickel or a dime advantage with another label on a commodity like evaporated milk it is obvious to you that you are getting the long end of the stick and you try to be competitive. In that kind of product it is not like chocolates.

Q. Well, what transpired at the meeting of January 18th? What was accomplished at the meeting?

A. Well, the only thing that was accomplished was that there were lots of problems and we didn't solve them."

"MR. POWELL:

Q. Can you tell the Commissioner what the situation was at the end of the meeting of January 18th, 1960?

A. What do you mean the situation?

Q. Well, there had been certain discussions at that meeting of whatever kind you had. Had there been any conclusions reached? Had there been any change in the situation between the start of the meeting and the end of it?

A. No, the only change I know of is that we had not corrected these conditions that were causing such a problem in the industry.

Q. When you say 'we had not corrected' does that mean you or who?

A. That means our discussions between the four of us, that there were these situations; in other words, they were still as they were.

Q. In your view there were certain things the other two firms should correct from Carnation's view, is that correct?

A. Well, I suppose everyone thought the others had something they should correct. We thought there was something going on in the industry causing these conditions.

Q. And each had different views about different subjects?

A. Yes.

THE COMMISSIONER:

Q. Again for the record, because I may have to try and understand this some day, when you speak of correcting certain practices do you mean by that that it was the hope that the meeting might result in the elimination of practices which the various companies did not approve of?

A. Well, as far as I personally was concerned I was hoping that some of these conditions that were

making our customers push Carnation in the background and the others in the foreground would be corrected so that we could --

Q. By 'corrected' you mean eliminated, do you?

A. Well, either eliminated or we would have to figure out some way to meet it.

Q. I suppose you could figure that out without a conference?

A. Well, it is pretty hard--

Q. As long as you knew what it was you could figure out some way of meeting it?

A. Well, as long as we knew what it was. Sometimes we don't."

(Evidence, T., pp. 29-31)

The following evidence was given by Mr. Atkinson of Pacific about the nature of the discussions at the meeting on January 18:

"Q. The meeting on January 18th what was the subject of discussion there?

A. Well, the whole situation was the subject of discussion. My concern, Mr. Chairman, was, as a guardian of the interests of our producers, was to see if there was any way in which we could keep them from continuing to lose income and this was, I suppose, the reason to discuss this thing and try to find some way out of it.

Q. And what kind of proposition did Carnation suggest in order to assist you to come to your --

A. You used a term -- Mr. Chairman, Mr. Powell used a term a little while ago which I think was used frequently during this meeting about cleaning up the market. Before anything was done the market had to be cleaned up and of course, I wasn't in a very good position because I did not know what was wrong with the market other than the price had gone down. They were making certain accusations there was this and that and the other

thing wrong and I did not know for sure whether it was or not. Whether their accusations had any foundation.

Q. These accusations were directed at both yourself and Alpha?

A. Yes, I would say so. Oh, perhaps I was the only one at the meeting who did not direct any accusation because I did not know of any at that point. I could not accuse the other fellow of something because he might have been doing a dozen things and I would not have known about it, but there was some accusations by Red Deer, by Mr. Johnstone, against the Carnation Company. I could not tell you specifically what they were, but there was some.

Q. Who was going to clean up the market mostly? Was it Carnation? Did they ever say why they cut the price One Dollar in Alberta?

A. No, not specifically. They said why they had cut it in Vancouver, because Alpha had cut it.

Q. What about the Alberta element?

A. I don't recall any sort of specific reason for Alberta but Mr. Johnstone complained about it."

(Evidence, pp. 73-74)

The following general description of what took place at the meeting on January 18 was given in evidence by Mr. Johnstone of Alpha:

"Q. Would you describe what happened at the meeting,

A. Well, I would describe it this way. That it was suggested to us that there was a lot of things being done we don't like and these things will need to be corrected. Mr. Atkinson then made the statement -- I am not doing wrong in making this statement am I?

Q. No, you are asked what happened.

A. Mr. Atkinson made the Statement: 'Well, whatever is wrong far as we are concerned, if it is wrong



in your opinion then we will correct it in order to get the price back on the track to eliminate these losses' and the reply to that promise was 'That is not good enough'.

Q. Who made that reply?

A. It would be Carnation. We had previously indicated that if Mr. Atkinson made that Statement, if it was necessary for him to make that statement, then that was satisfactory to us.

Q. And you would follow the same sentiment?

A. You see, it wasn't really our war, you know. We did not initiate it far as -- we did not have those complaints. We did not take the same view that Carnation did.

Q. Against Pacific?

A. No. Not to the same extent at all.

Q. Was any accusation made at the meeting against your operation?

A. Yes. Not in particular except one. Pacific made no accusations against us I recall. Carnation made one and that was we had a cooperative advertising arrangement in Saskatchewan."

(Evidence, pp. 108-109)

Later in his evidence Mr. Johnstone described in some detail various policies and practices of the three companies which were discussed at the meeting on January 18:

"Q. When the meeting of January 17, 18th broke up, what was the situation then? Was it agreed at that time there would be another meeting?

A. I don't know whether it was firm but it did suggest it.

Q. In other words, the meeting of January 17, 18th broke up without any final arrangements to settle the real problems?

A. That is right.

- Q. Was there any understanding at the end of the meeting of January 17, 18th, before the next meeting, certain things would be done?
- A. That is the idea.
- Q. What things were to be done?
- A. Well - Pacific had to clean up its orders they had taken which they had not delivered. Pacific had to clear away these different practices that had been used which Carnation objected to. Incidentally, one of them we objected to.
- Q. Which one was that?
- A. That was the price arrangement to certain wholesalers in British Columbia.
- Q. Why did you object to that?
- A. Because that is what stopped our getting our distribution in British Columbia. They were buying Pacific milk at lower prices than we offered new milk for.
- Q. What arrangement was it?
- A. A special arrangement of .10¢ to these two wholesalers on five thousand case orders. Incidentally, five thousand case orders to those wholesalers doesn't mean anything at all. Goods are sold 2% ten days, so it really doesn't mean anything at all. Five thousand case orders doesn't mean anything.
- Q. That is carloads, isn't it?
- A. Yes, but it is not an imposition on the wholesaler that size, because one wholesaler would use about twenty thousand cases a month. The other will use about fourteen thousand.
- Q. They are the biggest buyers?
- A. No, they weren't the biggest. One was the biggest and the one was the third. That is from our information. Then they had a freight service into Alberta

I mentioned in our brief. You see, this milk is delivered to a certain point. They interpreted it would be predicated on the minimum case goods weight which is 24,000 pound car. There is a shipper's rate for a 60,000 pound car so they would use the delivered price to get the higher rate and the higher it gets on the freight rate, it worked out to bigger figures. At Alberta it works out to about 06¢ a case and in Manitoba it works out higher than that. We never worked it out, but just from my knowledge of freight rates.

Q.       Carnation complained about that?

A.       Yes.

Q.       You didn't?

A.       Yes, we did, but they told us they discontinued it, so we assumed they had or were going to.

Q.       And is there anything else they were supposed to clean up before the next meeting?

A.       You mean far as we are concerned? Or Pacific?

Q.       Finish with Pacific?

A.       Yes. They had a cooperative advertising arrangement in Saskatchewan Carnation did not like.

Q.       Did Carnation itself have a cooperative advertising scheme?

A.       They did at that time, yes. A similar one.

Q.       Were they the first ones to start it?

A.       I would say not as cooperative advertising.

Q.       Did Carnation undertake to cut out their cooperative scheme if Pacific stopped theirs?

A.       Not at that particular point. But I think they might have indicated that they would review their situation. It is on a quarterly basis and the way they handle it, they just would not bother to renew for another three months. Pacific did not have a

cooperative arrangement in British Columbia. They had some in Alberta, more in Saskatchewan and a lot in Manitoba.

Q. One of the subjects Carnation wanted cleaned up - that means cut out, does it?

A. That is right.

Q. They wanted Pacific to cut out its cooperative advertising?

A. Yes.

Q. So that at the end of that meeting, far as Pacific was concerned, there was several things it had to clean up?

A. That is right. Not only cooperative advertising, several other things.

Q. And far as Alpha was concerned, what tasks had been set for you?

A. The task set for us, they did not like the cooperative advertising arrangement we had with Shelley Brothers in Saskatoon on the O.K. Economy stores but they had been discontinued and we had a general plan and they objected to our general plan. You have a copy of those letters. We incorporated our different plans into a general plan and we sent you a copy of the letters and that went to all wholesalers and their complaint about ours was that it was better than theirs.

Q. You mean better to the customers?

A. Better to the customers. They had put in a cooperative advertising plan in Saskatchewan and we did not have one in Saskatchewan in a general plan at that time and we asked them - they said they were only putting it in on a trial basis and if it was satisfactory they would continue it, and if it wasn't satisfactory, they might discontinue it, so we waited and waited until about November, I think we sent out our letter. In the meantime they said they were going to extend theirs to include Alberta and British Columbia, so then we put out our letter on the general plan, but they thought our plan was better for the customer

than theirs and that is their objection to our plan.

Q. What were you required to do about your plan?

A. We either had to discontinue ours or they said they had to increase theirs and the feeling was they did not want to increase theirs and we agreed to discontinue ours.

Q. So that is the way things stood at the end of the meeting of January 17th?

A. It did not get that far on January 17th. We weren't very much in the picture except the statement 'Now, Ellis, you have something there you have to give some thought to'.

Q. Was there a certain amount of acrimony at this meeting?

A. No there wasn't.

Q. It was just trying to help Pacific out. Was that the whole effort?

A. There was no acrimony because far as Pacific and ourselves were concerned, we were anxious to get rid of these losses because we did not have the financial stability Carnation had. They only took a loss on part of their business and we took a loss on all ours, so naturally we were more anxious to get things straightened up and would agree to go further in agreeing to things than they would."

(Evidence, pp. 114-118)

The attitude which Carnation took to the situation in Western Canada which had been brought about by the price war is indicated in certain communications between Mr. Crockett and Canadian officials of Carnation. The following are extracts from a letter of January 22, 1960 from Mr. Crockett to Mr. W.G. Spratt, Sales Manager of Carnation in Canada:

" . . .

When it comes to The Prairies and British Columbia, we have probably discussed this subject enough so that I have no additional comments to make. Certainly



we are going to have to really make the most of the current situation in our efforts to correct a very bad situation.

. . .

Inasmuch as we will probably have the best opportunity we have had for many a year to correct some of the factors and situations that have been working against us for many years in these areas, I would suggest that you assign Jack Young to the special responsibility of 'riding extreme herd' on these markets for the next few months. It would seem to me that this is our golden opportunity and an experienced man can help Harold Goodridge and the boys make the most of the situation.

Suggest you discuss this with Ted Lang and advise me of how you intend to implement and carry through on the open situation that should exist in the next few weeks . . . ."

(EMI 56, 207-208)

The following is an extract from a report made on February 3, 1960 by Mr. Lang to Mr. Crockett:

" . . .

I had written you earlier regarding the possibility of eliminating Co-op advertising in the West as a result of the present price war. It seems as though that if we leave this door open we will gradually work back to where we were when all of this started. ALPHA has discontinued the 5 cent jobber allowance . . . .

. . . ."

(EMI 49A, 223-225)

It appears from records of long distance telephone calls kept by Carnation that during the latter part of January and the beginning of February, 1960 Mr. Lang had telephone conversations with officials of Pacific and Alpha. The following paragraph in the Statement of Evidence gives the dates of such conversations:

"104. Records of long distance telephone calls kept by Carnation show that on January 25 Mr. Lang called Mr. Atkinson in Vancouver, (EMI 151, 318) on January 27

he called Mr. Johnstone in Red Deer (EMI 160, 327), on January 28 he called Mr. McDonald of Pacific in Vancouver, (EMI 159, 326) and on February 2 he made calls to Vancouver and Red Deer (EMI 157, 324; EMI 158, 325)."

A meeting of representatives of Carnation, Pacific and Alpha took place in Vancouver on February 7, 1960. The following attended the meeting: Messrs. Crockett, Lang and Spratt of Carnation, Messrs. Atkinson, McDonald and Wilson of Pacific and Messrs. Johnstone and Marshall of Alpha. According to the evidence of Mr. Lang, the meeting on February 7 was a direct development from the meeting of January 18:

"Q. Why were you present?

A. I was present to try to find out the answers to some of these conditions that were going on in the industry.

Q. Was the meeting a direct development from the meeting of January 18th?

A. Yes.

Q. And were certain conditions that had been under discussion at the meeting of January 18th discussed at the meeting of February 7th?

A. Yes."

(Evidence, T. p. 32)

Mr. Atkinson of Pacific gave the following evidence about the arrangements for the meeting in Vancouver on February 7:

"Q. Did you participate, far as your firm is concerned, in the arrangements leading up to February 7th?

A. We did not do anything on the arrangement. It was suggested we should meet here and we agreed to meet.

Q. Who made the arrangement?

A. Well - as I recall it, it was Mr. Lang. I think after our Toronto meeting it was suggested we should have another meeting. The question remained where.

Q. What was the purpose of having another meeting after

the Toronto meeting?

- A. Nobody agreed to anything. There was a lot of accusations made at the Toronto meeting but there was nothing that came out of it to anybody's satisfaction."

(Evidence, p. 78)

Mr. Wilson, Assistant Sales Manager of Pacific, expressed his view as to the purpose of the meeting as follows:

- "Q. What was the purpose of the meeting as you were informed of it?

- A. I would say that the purpose of the meeting was to try to re-establish the market prices throughout the general trading area."

(Evidence, p. 59)

The evidence previously reviewed in this chapter shows that Pacific and Alpha were greatly concerned over the losses in revenue resulting from the reduced prices of evaporated milk and that Carnation considered the price situation as important. Mr. Atkinson of Pacific gave the following evidence as to changes in practices which would be antecedent to the restoration of the prices of evaporated milk to a normal level:

- "Q. The meeting of February 7th in the Georgian Towers, you were there of course?

- A. Yes.

- Q. This meeting, was the pattern different to the meeting of January 18th in Toronto, in that something was accomplished or is that right?

- A. I think something was accomplished on the part of the Carnation Company, because we did agree we would discontinue certain things at that point.

- Q. And those things related to these various allowances?

- A. That is right.

- Q. What was the [quid] pro quo of the Carnation people?

A. It was kind of backhanded. In effect, they said until these things -- these weren't [sic] the words, of course -- but until these things are done, we are not going to give any consideration to raising the price. It was, I would say generally speaking, a fairly one sided discussion, with Carnation doing most of the talking."

(Evidence, pp. 78-79)

Mr. Wilson of Pacific gave similar evidence:

"Q. . . . Did you hear any expressions of this kindly advice that was given, that if there wasn't a certain standard, there might be repercussions on the price of evaporated milk in Western Canada?

A. Yes, I did.

Q. Would you describe how these intimidations [intimations] were passed?

A. I could not describe the exact words. If my memory is right, I believe that this gentleman stated that unless certain things were done or rather, undone, or discontinued, there would be no consideration towards restoring the market to an orderly condition. Those are not the exact words and you are going to ask who said it and it was Mr. Crockett who made the statement.

Q. Was there any discussion if that might arise what would happen again?

A. Not that I recall, Mr. Chairman."

(Evidence, p. 69)

The following is included in Mr. Lang's evidence about the meeting of February 7:

"Q. Did either Mr. Atkinson or Mr. Johnston [sic] at any time following January 4th and up to March 10th request of you that the Carnation Company raise its prices back to what they had been?

A. Well, I don't know whether it was requested or not

because that could have been in an offhand statement: 'Are you?' or 'Will you?' and, of course, if the question was asked if [sic] was not answered because it is still not our policy to agree on prices.

Q. Well, what kind of reply would be given if not an answer?

A. Well, I suppose my reply to a question like that would be, 'Gosh, we have got to be competitive'.

Q. Did you ever mention to either Mr. Johnston or Mr. Atkinson that the market had to be cleaned up?

A. Well, I may have confirmed what Johnston said to Atkinson or Atkinson to Johnston. We were as anxious to be competitive as they were and if they cleaned up then we would be competitive and if they didn't then our ten cents a case or more would have to be thrown in to be competitive as was the case in meeting Alpha's two cents off.

Q. Did the Carnation Company Limited cut out its co-operative advertising in the four western provinces as of June 30th, 1960?

A. Yes.

Q. Why?

A. Because Alpha had cut theirs out and we didn't think we had anything else to meet.

Q. Why had Alpha cut theirs out?

A. Well, I suppose we all wanted to cut it out. We did discuss it and we agreed that that would be something we could cut out.

Q. Co-operative advertising was something that could be cut out and that was agreed and that was agreed to at the end of the meeting of February 7th in Vancouver - on co-operative advertising there had been a general understanding amongst the three firms that that would be cut out by June 30th?

A. Yes.



Q. That was a process in cleaning up the market, is that correct?

A. Well, I don't know whether it was cleaning up the market or not. It was one of the things that was eliminated. We think the deals as such are eliminated but we are not so sure if co-operative advertising as a whole is eliminated."

(Evidence, T. pp. 37-38)

Although the evidence does not show that any plan to restore the prices of evaporated milk in Western Canada was made at the meeting of February 7 it was felt that as a result of the elimination of some practices to which objection had been taken the restoration of the price level could be hoped for. Mr. Lang gave the following evidence:

"THE REPORTER (Reading):

'Q. Was there any general understanding or feeling at the end of the meeting of February 7th that if the agreement or arrangement that had been made there in respect of allowances and advertising and similar matters were carried out the price level would be restored?'

THE WITNESS:

Well, that is a pretty broad question. There was certainly feeling if that means hopes.

MR. POWELL:

Q. You had the hope?

A. I had the hope for one, probably others.

Q. On what were you basing your hope?

A. I was hoping the price level would be restored.

Q. Did you have any reason to believe that your hope would be fulfilled?

A. Well, certainly there were some improvements. We had agreed, for example, to eliminate the co-

operative advertising allowance that we were giving and MacDonald was going to check on these allowances. Whether he did anything or not I can't be sure. Alpha had an allowance that they had agreed to discontinue on their co-operative advertising. So I guess that would be some reason for hope."

(Evidence, T. pp. 39-40)

The following are extracts from the evidence of Mr. Johnstone:

- "Q. When the meeting of February 7th was concluded, was there a feeling then progress had been made and a new phase was to be undertaken?
- A. Possibly you could describe it that way. Carnation was satisfied things were in order according to their feeling on the way they would like to have them and it was just left that way.
- Q. And then the purpose of the meeting was to restore the price level in due course?
- A. The feeling was, I think, that if these things went to their satisfaction, they might raise their price and of course, we would always follow.
- Q. In fact, when the price raises came, were they not a bit unusual in this period in that Carnation came last -- the leaders came last?
- A. That may be because they wanted it that way. Pacific was the most anxious to have it raised, to stop their loss and we were definitely just as anxious but not as vociferous in it and Pacific was actually in the strongest position to raise the price because in their own market they filled up their own accounts with milk. . . .
- . . .
- Q. When the meeting broke up on February 7th, was the effect of your evidence that Carnation left with the idea that certain things had by now been cleaned up or the process was agreed to their satisfaction that things would be cut off when it was contractually possible to have them cut off. The cleaning house had been effected and the feeling of the meeting was

that the thing to do was for somebody to take the lead in moving the price back? Was that not the [quid] pro quo?

A. Undoubtedly. That was an anticipation of us all, we would get away from losing money.

. . .

Q. Was it your understanding at the meeting of February 7th that Pacific would lead?

A. No, I could not say there was an understanding.

Q. Was there an understanding, when the time came the others went up, Carnation would follow? Or was there a feeling?

A. No, I think it was up to us individually because as I recall it, us cooperatives of course possibly looked at it a little bit differently than the other. We were anxious to eliminate our losses and I guess they were too, but I guess we showed it more. There was this feeling, that if anyone moved up, that likely the other prices would move up like any other price change.

Q. So that meeting went rather amicably?

A. Yes."

(Evidence, pp. 130-134)

Mr. Johnstone also gave the following evidence as to the modifications of distribution policies which were accepted by Alpha, Pacific and Carnation in the discussions at the meeting of February 7:

"A. . . . we did agree that we -- we had already discontinued the promotion to the wholesale and we agreed at the end of June we would discontinue the one to the retail. That is all we were asked to do.

Q. What did Pacific have to do?

A. They had to agree to discontinue the special allowance to the two wholesalers, which

incidentally was very bad for them and they agreed to eliminate these freight differentials and cooperative advertising plans in Alberta, Saskatchewan and Alberta [sic]. They had some other beefs too, you know, smaller ones, principally points of irritation between Carnation and ourselves. Principally in hospital milk.

Q. Did Carnation give away anything?

A. They were going to discontinue their cooperative advertising.

Q. Did they?

A. Yes, but they never showed any notice on it. The wholesale trade did not know until the 30th June 30th or after they were going to discontinue, whereas they hounded us quite regularly, 'Did you send out your letter' and we sent them a copy of the letter and I said 'The wholesalers have no knowledge you are going to discontinue your plan'. They said 'We don't need to. We leave it to our district man'.

Q. Can you spend [as] much money as you want on newspaper advertising?

A. Far as Carnation is concerned? Oh yes. Our policy is -- at least their limitation to us is this. You can't carry on any advertising program that will give anybody above the consumers anything. You can spend all you want on the consumer level but not above it. If you give a store or wholesale anything or a service, then that is a breach of what they want."

(Evidence, pp. 124-125)

Mr. Atkinson of Pacific considered that the modifications in distribution practices accepted by Pacific were in the nature of restrictions. His evidence includes the following:

"A. . . . I think we are restricted to some extent, especially on the two points, the point of the Ten Cents for the five thousand cases and the ten cents for warehouse privileges by a Prairie wholesaler. I think it would be reasonable to say that because these things were taken away our sales activities were impaired to some extent and in the

sense of the term restriction, probably there was this restriction and I think we all felt there was this restriction that if we did not do this, the price could go down again or go lower.

Q. If you did not behave. I am trying to get at what the situation is or was and behaviour is involved here, market behaviour by you. Am I correct in that?

A. Yes, I think so.

Q. And you feel if you do certain things, the Ten Cent deal was one of them and the Prairie warehouse proposition was another, that kind of behaviour might precipitate trouble?

A. If they were reintroduced?

Q. Yes?

A. I think so. I think they were two of the rather important items in their minds. There was all kinds of others. We listened to them for the whole day.

Q. Can you describe some of them?

A. There was these things we were talking about. These enclosures in cars, and in effect give the wholesalers the benefit of a carlot rate. This was a thing there was a good deal of discussion on. I could not participate too much because I did not know too much about them."

(Evidence, pp. 82-83)

"MR. POWELL:

Q. But does it boil down you can spend as much on advertising as you want, but don't give any allowance that affects the price?

A. That is right. Don't give any allowance to any wholesaler or retailer that they can benefit from.

Q. That is the proposition you were given?

A. Not in so many words, but in a whole lot of words,



if you know what I mean.

THE CHAIRMAN:

Q. It is the conclusion you drew from all the words?

A. That is right.

MR. POWELL:

Q. So you would like to think you were forbidden from competing on price or variation from their price?

A. Forbidden is rather a strong word. I suppose there is a suggestion there. The suggestion is if you do it, the sky might fall on you."

(Evidence, pp. 86-87)

Mr. Marshall of Alpha gave the following interpretation of the outcome of the meeting of February 7:

"MR. MARSHALL:

. . . we left that meeting with -- it was our interpretation of that meeting the only thing that would be allowed to promote the product would be advertising of regular media, such as newspapers, television, radio, etc. The only other thing a person would be allowed to do to promote their product would be store demonstrators, having a demonstrator demonstrate the qualities of the product. That was our interpretation of the meeting until a visit by Mr. Crockett and at that time the Carnation Company were using a Casino type radio show in the interior of British Columbia. When Mr. Crockett was in the office I asked him was this not contrary to our interpretation of the meeting and his answer at that time was no. That anything at the consumer level was okay."

(Evidence, p. 128)

Mr. Lang of Carnation was asked about his company's attitude toward Pacific's practices in regard to freight shipments to the Prairie Provinces. His evidence includes the following:

- "Q. What was your understanding of what was involved in these freight propositions?
- A. I think there were two and I am still not clear on what was going on or which applied to which but as I understood it there were two or are two (I don't know which) systems, that Pacific would sell a 30,000 pound carload of milk and they will give the 30,000 pound rate off the invoice and then the customer would put the 30,000 pounds in with 30,000 pounds of canned goods and bring his product in. The other one was or is a customer would order a 60,000 pound car and he gets - I don't know what it would be - ten cents a case for storing that milk, that extra 30,000 pounds in his warehouse until he uses it.
- Q. Don't both those propositions affect the net cost of the product to the buyer?
- A. Well, it also has other effects. If you have 60,000 pounds of milk you are going to push that out a lot quicker than someone else's from whom you get 20,000 pounds.
- Q. That may be but doesn't it affect the net cost to the buyer?
- A. Well, of course, he has got warehousing costs-- I don't know whether it affects the net cost. It might have a psychological effect. He might think, 'I am getting this extra five cents' and maybe his warehouse costs might be higher for 60,000 pounds. He has 60,000 pounds of that product and maybe 30,000 pounds of ours so he figures, 'I had better put on a special this weekend' so we lose out.
- Q. Did you object to this practice on January 18th at the meeting?
- A. No, we did not.
- Q. Did you object later on to this practice?
- A. Yes. I don't think I was even aware of this.
- Q. When was the objection made?

- A. That would have been later on, not that meeting.
- Q. What was the point of the objection?
- A. Well, we were trying to straighten out that trade practice.
- Q. Were you objecting to Pacific selling milk in large quantities?
- A. Well, of course, we all tried to sell it in as large a quantity as we could.
- Q. What was the point of the objection then?
- A. Well, trying to get on some sort of a competitive basis so we could stay in business out there.
- Q. And when you say 'competitive' what does it mean in this particular context?
- A. Well, actually it boils down to the fact that we were trying to get these customers to be as willing or enthused about pushing Carnation milk as they were about Pacific and in a nutshell that is what it boils down to."

(Evidence, T. pp. 25-26)

The restoration of prices of evaporated milk in Western Canada to the level prevailing before the price war appears to have been made in a succession of steps according to the details as to price changes given in the returns of information of the respective companies. Effective March 1, 1960 Pacific increased its price in the coastal area of British Columbia by \$1.00 per case thus reverting to the price of \$7.15 which had prevailed prior to January 4, 1960. On March 3, 1960 Carnation increased its price in the coastal area of British Columbia by 96 cents per case (EMI 26, 255). Alpha increased its price by 96 cents per case in the coastal area of British Columbia on March 4, 1960 and by \$1.00 per case in the rest of Western Canada. On March 5 Pacific increased its prices in eastern British Columbia and in the Prairie Provinces by \$1.00 per case. On March 7 Alpha raised its prices in coastal British Columbia by \$1.00 per case. Finally, on March 8 Carnation increased its prices by \$1.00 per case in all Western Provinces.

The fact that Pacific had accepted orders for evaporated milk at a firm price up to January 15, 1960 and was not able to

complete delivery of such orders until some time later appears to have been a factor in determining when Pacific would restore the previous price level.

Mr. Lang of Carnation was questioned on this point:

- "Q. At the meeting of January 18th was it a subject of discussion that the Pacific Milk had taken orders earlier in January at a firm price?
- A. Yes.
- Q. And did that fact have any influence on the length of the time it took before the prices edged up as of the end of February or early March?
- A. Well, the only thing that you can conclude from that would be that if Pacific had orders when they were shipping at these prices certainly we were not going to do anything to raise our prices. We were going to be competitive. We had dropped the price to be competitive."

(Evidence, T., pp. 64-65)

Mr. Atkinson of Pacific was asked about a telephone conversation which he had with Mr. Lang of Carnation some days after the meeting of February 7 and while he did not recall whether the conversation took place on February 17, a date which was shown in the records of Carnation, he remembered a conversation in which Mr. Lang had enquired about the delivery of orders taken at a firm price. Mr. Atkinson's evidence included the following:

- "Q. Do you recall if Mr. Lang enquired how you were getting along with the program or something to that effect?
- A. I don't know if it was that date or not but there was a call during which he made such an enquiry whether we were getting this firm price milk delivered.
- Q. That is the milk you had taken orders on by January 15th and you were still shipping it out in February ?
- A. That is correct, Sir.

- Q. There is a suggestion because of this firm price milk on your order book that you weren't in a position to accept a price increase until you got rid of that. Was there any proposition held up because of your position?
- A. Yes, I think that accounted for the delay.
- Q. Where was this firm price milk? Back in Manitoba and you had not delivered it?
- A. I think a good deal of it was local but I could not tell you exactly.
- Q. How did the situation arise that you were the highest price in the local area and you got caught with apparently the biggest overhang of orders you could not complete?
- A. Just the popularity of our milk, Mr. Chairman.
- Q. So that in fact your inability to complete your firm price orders for sometime, the re-establishment of the old price level was delayed?
- A. I think that is a fair statement.
- Q. And then Lang also phoned up -- he phoned some stage after the meeting of February 7th and enquired how you were getting along and I think you advised him?
- A. I think I did, near as I was aware.
- Q. Was there some kind of a program, as soon as you got rid of that batch of orders you would make a price restoration move.
- A. That is what we did.
- Q. That is pretty well what the general understanding was?
- A. Well, from our standpoint we could not -- I did not feel we could make a move in that direction until we had got this milk out of our system."



Mr. Lang of Carnation was questioned during the inquiry by counsel for the company about the circumstance leading to the modification of trade practices by Carnation, Pacific and Alpha and gave the following testimony:

"Q. Mr. Lang, I understand that you testified this morning that at this meeting in Vancouver the Carnation Company undertook to drop its co-operative advertising plan, is that right?

A. Yes.

Q. Now, at the meeting in Vancouver you have also testified that there were a number of other trade practices discussed by the participants in the meeting, is that correct?

A. That is correct.

Q. When I use the word 'agreement' I mean a commitment by you with some person else that you will undertake to do a certain thing or to refrain from doing a certain thing and whenever I use the word it will be used in that sense. Now, with respect to these other trade practices did you make an agreement with the other participants that the Carnation Company would stop any trade practices which the company was then carrying on?

A. Other than . . .

Q. Other than the co-operative advertising?

A. No.

Q. Did they make any agreement with you that they would stop these other trade practices which they were then carrying on?

A. Other than Alpha's cooperative advertising?

Q. Yes.

A. No, only that Pacific, MacDonald [sic] was going to go and check to see what could be done with some of these rebates or discounts.

Q. Did he commit himself to cut them out?

- A. No, he just said he would see what he could do and that is the last I heard of it.
- Q. These trade practices other than co-operative advertising which were discussed in Vancouver, do you know whether they are still being carried on by your competition?
- A. Well, it is of course pretty obvious that something is going on when the sales manager was out west just the week before last and one of our big customers out there gave him quite a working over that we were not competitive and that we should give some form of quantity discount or rebate and he did not say what our competition was doing but he implied that it had and whether he had even talked to our sales manager or not we have known in this one province of the prairies for the last two or three months that there is one brand of evaporated milk that is being promoted very heavily by this customer. We have had reports from Alberta of space in one major city in Alberta. I do think they are still going on. I am sure we would know if they are still going on. These things are not done for nothing.
- Q. When you speak about 'space' you mean a discount that is given to all customers for similar quantities of sales or do you mean a discount that is given only to selected customers?
- A. To selected, whether a package deal or merchandising allowance to one customer or customers. It would not be going to all of them because if it was we would know about it because as soon as Alpha brought in that co-operative advertising programme we knew about it at once. That went to all of them but when it is just going to some of them you can't nail it down."

(Evidence, T., pp. 96-98).

In the extracts from the evidence of officials of Pacific and Alpha which have been set out earlier in this chapter it appears that these officials considered that trade or promotional activities of their companies were limited in certain directions because of the

possibility that resumption of practices which had been discontinued or similar practices might lead to strong competitive action by Carnation. This attitude was expressed definitely by Mr. McDonald, Sales Manager of Pacific, when he was asked about a reference to "price off" deals in a document from the files of Carnation. Mr. McDonald gave the following testimony:

- "Q. There is a note here on the second page of the document, 'Off the face of label offers are not permissible'. Was this subject introduced at this meeting?
- A. Yes, Sir.
- Q. And it was decided they were not permissible?
- A. My answer to that question, it was suggested that it would be poor trade practice.
- Q. Was it suggested that it would be a poor trade practice to the extent that it was an 'or else'? 'Don't do it or else'?
- A. I believe, Mr. Chairman, I answered Mr. Powell's question previously.
- Q. Maybe you wouldn't mind answering it again then, please?
- A. When you questioned me regarding the price -- getting the price back to a normal basis, using that word 'normal', which is used loosely, I imagine it was suggested at that time that they would not be -- it would be a competitive situation brought around by an off label.
- Q. The competitive situation would be what?
- A. That it would introduce or corrupt our market again.
- Q. They were saying in so many words that were quite understandable to you that they would drop the price?
- A. Yes, Sir."

(Evidence, pp. 48-49)

Mr. McDonald replied as follows when asked about the position of Pacific in regard to the re-introduction of an allowance which had been discontinued after the start of the price war:

"Q. Are you under any restraint from your undertaking or for any other reason from reintroducing that particular allowance? External restraints?

A. Mr. Chairman, the question is am I under, as sales manager for this organization -- I don't know whether the questioner is asking whether I am being restrained by a competition or by our own organization?

THE CHAIRMAN:

He said external. I think he means outside your organization?

A. We have not reinstituted it, Mr. Chairman.

MR. POWELL:

Q. If you wanted to do it, what consideration would you turn over in your mind before you made a decision to do it?

A. We would have to consider what effect it would have on our return to our producer and we certainly would not advise our management on something that was going to reduce the return to our producers.

Q. Would you have to consider the return to your producers caused by a price decrease by your competitors?

A. If there is a price decline on the market, our producers would definitely be affected.

Q. Would it be your present understanding that if you introduced that Ten Cent allowance with no comment to any other outside person, that your organization would (1) be breaking an undertaking, and (2) be subject to violent retaliation?

A. We could be subject to violent retaliation.

Q. But was this the situation as it was left after these meetings, that anything more of this or anything like it and there would be violent

retaliation?

A. Mr. Chairman, the question in my opinion is would we be subject to retaliation and it is in my opinion we would be subject to it."

(Evidence, pp. 52-53)



## CHAPTER V

### APPRAISAL OF ACTIONS OF CARNATION IN RELATION TO COMPETITIVE ACTIVITY OF PACIFIC AND ALPHA

#### 1. Carnation's Position in Evaporated Milk Industry

Carnation is the leading producer of evaporated whole milk in Canada. In 1958 and 1959 Carnation's production amounted to more than 63 per cent of the total production of the industry and its domestic shipments formed more than 66 per cent of all domestic shipments of evaporated whole milk. Carnation's share of the domestic market was considerably larger in the provinces east of Manitoba than in Western Canada. In 1959, Carnation's shipments formed almost 90 per cent of the shipments of evaporated whole milk in the eastern Provinces which absorbed almost 65 per cent of all shipments of evaporated whole milk.

Carnation's shipments of evaporated whole milk to the Western Provinces, in 1959, formed slightly more than 25 per cent of the shipments of all companies and such shipments constituted 13.6 per cent of the total domestic shipments made by Carnation. Carnation's shares of the markets in the Western Provinces varied among the four provinces. In 1959 Carnation supplied over 60 per cent of the market in Manitoba, over one-third in Saskatchewan and Alberta and about 10 per cent in British Columbia. In the latter province, Pacific, the local producer, supplied about 88 per cent of the market. The local producer in Alberta, Alpha, had almost 45 per cent of the market and it supplied almost 40 per cent of the shipments in the neighboring province of Saskatchewan. As the evidence reviewed earlier in this report makes clear, Carnation's position in Western Canada had been declining in recent years and the company was concerned over the declining trend in its share of the market in Western Canada.

Carnation is a wholly-owned subsidiary of the Carnation Company of the United States. It was submitted by counsel for the company that evidence about operations of the Carnation Company in the United States is irrelevant to the question of the position of Carnation in Canada. Although the Commission has not found it necessary to examine the operations of the Carnation Company in the United States, there is one aspect of the relationship between Carnation and its parent company which the Commission considers relevant in the present inquiry, and that is the advertising on the part of the parent company which is seen by the Canadian public. Mr. Lang of Carnation stated that some promotions by the Canadian Company formed part of North American promotions in which the parent company in the United States would presumably play a large part. It is also apparent that advertising by the parent company in periodicals published in the United States and which have Canadian circulation or in television programs which are seen in Canadian communities would add to the impact on the Canadian public of advertising engaged in directly by Carnation in Canada. It is clear that in Carnation's own opinion its advertising position was stronger

than that of Alpha and Pacific. Mr. Crockett of Carnation made the following assessment in a report prepared on September 30, 1959:

" . . .

Our position in the West is certainly deteriorating at a slower rate than in years past. We anticipate that our Cooperative Advertising Allowance Program, which makes us competitive for the first time in several years, will enable our superior advertising and sales efforts to reverse the downward trend of recent years.

. . ."

(EMI 334, 96-105)

Mr. Spratt, General Sales Manager of Carnation in Canada, gave evidence which indicates that he considered that Carnation, as a national advertiser, had a strong position in relation to Alpha and Pacific. At one point in his evidence he said:

"A. . . . We were running into a position where Alpha and Pacific were getting far more retail advertising support from chains and voluntary groups than we were and this we found rather hard to understand when we have what we consider a strong national advertising type of programme and a national way of promoting the sale of evaporated milk and when someone is leading the way and doing more for the industry it is rather difficult to understand why a competitor should gain advantage at retail level from special prices or displays or what have you . . ."

(Evidence, T. p. 113)

## 2. Consideration of Arguments Made on Behalf of Carnation

It was argued on behalf of Carnation that the company was not the dominant factor in the evaporated milk trade in Alberta or the price leader there or elsewhere in the Prairies. Counsel for Carnation contended that the evidence given by representatives of Pacific and Alpha goes no further than to indicate that the other producers had no objection to following the Carnation price ordinarily but that whenever their interests were involved or they thought they wanted to force a price policy of their own they were quite capable of doing so and did so. Certain incidents were referred to in support of this argument, including the situation during the price war in 1960

when Pacific did not lower its price in British Columbia to the level established by Carnation and Alpha and the fact that Pacific was the first supplier to reduce prices in Saskatchewan and Manitoba during the price war.

Counsel for Carnation said that the proposition that Carnation had a dominant market position in Western Canada must be based on the fact that it is a large eastern company and that its parent company has large operations in the United States. These factors he regarded as irrelevant to Carnation's actual position in Western Canada where its share of the market, as has been shown, was smaller than that of Pacific and Alpha taken together, except in Manitoba. Carnation also was under a disadvantage in transportation costs in other provinces in Western Canada, where freight rates from factories of Pacific and Alpha were less than from Toronto.

While it is clear from the evidence that in their home markets Pacific and Alpha had the advantage of location and the benefit of support for local products, we do not think that these factors offset the strong position held by Carnation because of its much larger scale of operations in Canada as a whole and the benefit it derived from advertising by the parent company in the United States to which reference has been made in the preceding section. We believe that the fact that Pacific and Alpha sold practically their entire output of evaporated milk in the Western Provinces whereas Carnation distributed only about 13 per cent of its production in the same area, gave Carnation a position of considerable power in the circumstances created by the actions which are the subject matter of this inquiry.

Counsel for Carnation took objection to the manner in which evidence was secured in the inquiry as to the meetings between representatives of Carnation and Pacific and Alpha. He pointed out that leading questions were frequently put to witnesses and that in many instances representatives of Pacific and Alpha who were examined gave their inferences as to what occurred at the meetings and expressed their opinions as to intended meaning of what was said by those who participated. It is the case that much of the evidence relating to the meetings is of this character. Consequently, the Commission has taken particular care in considering such evidence, and has not placed its main reliance upon it in reaching conclusions about the meetings. At the same time it must be borne in mind that the attitude taken and statements made by representatives of Carnation at the meetings must have been intended to influence the attitudes and actions of Pacific and Alpha, and that what opinions the representatives of the latter companies formed as a result of the meetings are, therefore, of significance from this point of view.

Counsel for Carnation referred to the evidence of certain witnesses that they considered Pacific and Alpha would be subject

to retaliation by Carnation if certain allowances which had been discontinued were restored, and pointed out that what constitutes violent retaliation would be viewed differently by different persons. His argument contained the following:

" . . .

Well, of course I object to the leading but when we came to this question of violent retaliation it depends what you mean by violent retaliation. It is quite possible that at this meeting the Carnation people told these people that if they were going to introduce a two cent off label that it would be met, that Carnation would not stand still while this was happening, that the effect of a two cents of label would be that the price would be reduced and if my clients could not do that any longer we are coming to a pretty pass.

. . . "

(Hearing, pp. 83-84).

As previously indicated, the position taken on behalf of Carnation was that the allegation of the substantial lessening of competition must have relation to the Province of Alberta as the reduction in price referred to in the allegation is that which was made by Carnation in the Province of Alberta. Accordingly, counsel for Carnation in his argument dealt with changes in competitive practices which had effect in the Province of Alberta.

At the beginning of the price war in January 1960 Carnation, Pacific and Alpha each had arrangements for advertising allowances in effect which were applicable in the Province of Alberta. One result of the meetings attended by representatives of Carnation, Pacific and Alpha was that by the end of June 1960 each company had discontinued its program of co-operative advertising allowances.

Effective January 1, 1960 Alpha began two co-operative advertising arrangements which were applicable, apparently in all provinces, including Alberta, in which the company did business. One arrangement was described by Alpha as a sales promotion allowance to wholesalers and was set out in a letter of November 30, 1959 to customers of Alpha as follows:

"Dear Sirs:

Effective January 1st, 1960 we are pleased to offer a sales promotion allowance of 5¢ per case of Alpha



Evaporated Milk 48 Talls and/or 5¢ for two cases of Alpha Small size.

It is our hope that in return we may receive your strong support for these products that this arrangement be of mutual benefit.

We take this opportunity of thanking you for past favors. "

(Alpha's Return of Information).

According to Alpha's Return of Information this allowance was discontinued on January 30, 1960.

The other arrangement was extended to chains of food stores, both corporate and voluntary groups, through the wholesalers associated with the chains or who owned or controlled them. The arrangement was described in a letter of November 30, 1959 from Alpha to such customers:

"Dear Sirs:

Effective January 1st, 1960 we wish to recognize your controlled retail outlets and merchandising facilities with a quantity rebate on your Alpha Evaporated Milk purchases of 1% (7.5¢ per case) on your gross purchases payable at years end, no later than the 30th of January the following year.

In return we expect at least four feature promotions per year, two of these we will reimburse you for. Further it is hoped our product will be given preferred shelf space, and a preference at all times with regard to merchandising.

It is our ultimate desire that this offer will be of mutual benefit.

Thanking you for your past favors. "

(Alpha's Return of Information)

According to Alpha's Return of Information this arrangement was discontinued on June 30, 1960.

Pacific had two co-operative advertising arrangements in January 1960 which were applicable in the Province of Alberta. The



details of these have been given in an earlier chapter. One provided for an allowance of 5¢ per case for one advertisement and 10¢ per case for two advertisements by retailers, department stores, chain stores or their headquarter interests. The other, which was in effect in the Prairie Provinces provided allowances to chain stores for co-operative advertising and merchandise package deals.

Counsel for Carnation submitted that if there was an agreement to restrict advertising among Carnation, Pacific and Alpha such an agreement would not be contrary to the Combines Investigation Act by reason of the amendment made to section 32 of the Act in August, 1960, Subsection (2) of section 32 now reads, in part, as follows:

"(2) Subject to subsection (3), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

. . .

(f) restriction of advertising, . . ."

Subsection (3) now reads:

"(3) Subsection (2) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
- (b) quantity or quality of production,
- (c) markets or customers, or
- (d) channels or methods of distribution,

. . ."

Counsel for Carnation summed up his argument on this point as follows:

" . . . Certainly they were paying money for advertising. I know of no way in which you can get advertising without paying for it. So that it is my submission that the agreement as to the restriction on advertising was not one that related to price. It is true the advertising allowance made to these people was in the form of so much per case but it was in each case expressed to be an advertising allowance. So that insofar as these parties agreed among themselves to restrict advertising I submit that there is no offence in that at all."

(Hearing, pp. 102-103)

The companies were not, properly speaking, paying for advertising by customers. They allowed so many cents off the price of a case of canned milk, on condition that certain advertising was done. The allowance might equal or be much less or more than the cost of the advertising. It had a direct relationship to the number of cases purchased and not to the amount spent on advertising. Thus the allowance certainly had a direct effect on price.

It may be noted that the period embraced by the allegation made in the Statement of Evidence was January to March, 1960, whereas the amendment to the Combines Investigation Act on which counsel for Carnation relies did not come into effect until August 10, 1960.

If, for purposes of considering the nature of the restrictions on advertising, we should assume that the amendment was in effect during the period to which the allegation relates, we would have to take account of the fact that the exemption relates to an agreement to restrict advertising which has not lessened or is not likely to lessen competition unduly in respect of prices, quantity or quality of production, markets or customers or channels or methods of distribution. We think that we should have to consider whether an agreement into which some parties felt they were compelled to enter because of the actions or threatened actions of a larger competitor might not be indicative of a lessening of competition brought about not so much by agreement among producers as by the domination of a large firm. In any case, the allegation against Carnation is with respect to the design or effect of its pricing policy in the Province of Alberta, and not to a co-operative arrangement with competitors on advertising.

Although it was argued by counsel for Carnation that the co-operative advertising arrangements did not relate to price the Commission considers, for the reasons already given, that such arrangements may have an influence on prices. It is obvious that both allowances offered by Alpha were related to price. Under one plan there was an allowance of 5¢ per case in return for which Alpha merely asked for strong support. The other plan was referred to as "a quantity rebate" which clearly indicates its relationship to price.

Evidence in the inquiry also indicates that advertising allowances tended to influence resale prices. The following is contained in a report of Mr. Crockett for April 1959:

" . . .

(Edmonton-Calgary)

In Alberta, however, the struggle for position among the 'chain operators' has generated 'price cutting' through 'special week-end features'.

Cooperative advertising payments by both Alpha and Pacific resulted in their being selected for Special Features, to Carnation's detriment [sic]. We should consider extending our cooperative test to this area at an early date.

. . . "

(EMI 360A, 46-55)

While the following extracts relate to the situation in Vancouver, they are relevant in that they show that advertising allowances may influence prices. The first is a quotation from Mr. Crockett's report for June 1959:

" . . .

Vancouver:

. . .

The extension of our cooperative advertising program should again made us competitive in this market. The introductory efforts of Alpha's and Pacific's retaliatory program has squeezed us on retail prices and shelf position.

. . . "

(EMI 352A, 73-80)

The second quotation is from Mr. Crockett's report for September, 1959:

" . . .

Vancouver:

. . .

As expected, our losses may be contained. We have been losing ground all this year, beginning when Alpha entered the British Columbia market. Alpha's (50¢ per case) introductory offer and Cooperative Advertising support, plus strong media effort was met by Pacific, resulting in 'Special Feature Prices' for both brands that cut into our share.

(EMI 325A, 110-118)

It is the opinion of the Commission that the curtailment of advertising allowances by Pacific and Alpha must be considered as an element of the effect on competition brought about or designed to be obtained by the action of Carnation in lowering its price in Alberta, and was sought at least in part, because of the effect on prices of the advertising allowances that had been granted by Pacific and Alpha.

A further submission made by counsel for Carnation was that to the extent that the advertising allowances required services to be performed they were contrary to another provision of the legislation against restraints of trade which forbids discrimination in price among competitors with respect to the sale of goods of like quality and quantity. (1) It was argued by counsel for Carnation that as the legislation did not at the time make any provision for allowances based on services, such allowances were contrary to the law. Counsel for Carnation went on to argue that, in any event, the advertising allowances of Alpha and Pacific, if they had not been discontinued would by August 10, 1960 be governed by a further amendment to the Combines Investigation Act which became effective on that date and which established conditions under which allowances for advertising or display purposes could be granted. (Section 33B). It was his submission that the allowances of Alpha and Pacific would have become illegal by reason of the amendment and that, therefore, the period in which they might have continued was very short. The Commission does not consider that the evidence before it is sufficient to enable any conclusion to be reached as to the position of the allowances in relation to the provisions of the Combines Investigation Act relied on by counsel for Carnation. Even if it is assumed that the particular allowances were in the nature of payment for services and assuming further that they would have become illegal on August 10, 1960, these conditions could not justify actions by a competitor to compel their

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(1) Section 33A. (1)(a) of the Combines Investigation Act (formerly section 412. (1)(a) of the Criminal Code) reads:

"(1) Every one engaged in a business who

- (a) is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to such purchaser, is available to such competitors in respect of a sale of articles of like quality and quantity;"

. . .

is guilty of an indictable offence and is liable to imprisonment for two years.



discontinuance at the time they were operative. In any event, the Commission does not consider that the correction of improper trade practices could be safely entrusted to the exercise of economic power by a firm capable of controlling the competitive actions of its rivals. This could only be considered as taking the law into one's own hands and could not be accepted as justification for actions which are improper under another section of the legislation.

The Return of Information of Pacific lists an allowance described as follows:

- "(5) Storage and handling allowance on carload lots to wholesalers in Alberta, Saskatchewan and Manitoba."

There is evidence in the inquiry in regard to the granting of a storage allowance to one firm in Alberta which Mr. Wilson of Pacific indicated was withdrawn as a result of the meetings with Carnation and Alpha (Evidence, pp. 57-61). Counsel for Carnation argued that a single instance of this kind could not be regarded as a substantial lessening of competition but it is clear from Mr. Wilson's evidence that there were other customers to whom the allowance might have been extended. It is also indicated by Pacific's Return of Information that the allowance was available to wholesalers in Alberta, Saskatchewan and Manitoba buying in carload lots.

It was submitted by counsel for Carnation that the Combines Investigation Act must be deemed to protect competing practices which are legal and that if certain practices existing in the evaporated milk trade in Western Canada were illegal, as he contended, then their elimination is irrelevant. As already indicated, the Commission does not consider that the evidence in the inquiry establishes the illegality of any practice which was the subject of discussion between Carnation and Pacific and Alpha, or that it would be proper conduct on the part of a private firm to secure the elimination of practices which it regarded as unlawful by resorting to unlawful methods itself.

Counsel for Carnation argued that if it were not for the meetings between Carnation and Pacific and Alpha, it would have been obvious that Carnation's action in reducing the price of evaporated milk in Alberta was designed for no other purpose than to meet Alpha's competition in British Columbia and had nothing to do with competition in Alberta. He admitted that at the meetings Carnation used the opportunity to find out what they thought was taking place with regard to special discounts. These, of course, would be discounts not only in British Columbia but in other western provinces as well.

It was further submitted by counsel for Carnation that his client's position in British Columbia, as shown by the evidence, was



more vulnerable than that of Pacific in that any further loss of its share might result in its product ceasing to be stocked on an adequate basis in retail stores. If such a development occurred Carnation would have considerable difficulty in recapturing its position in the market. Counsel's argument included the following:

" . . . Now, in such circumstances Carnation had every reason to decide that the way to deal with this situation was to come to the Province of Alberta and indicate to Alpha that if it was going to compete on a two cent off basis which is a very stiff reduction that it was not going to choose the time and the place of the competition, that Carnation might have something to say about that too and that Carnation by going to Alberta would put Alpha under some real pressure, under somewhat the same kind of pressure as it was. If it permitted the situation to continue as it was then Alpha could continue this two cent off offer and could use it again and as it had a very small share of the market it was free to come into that market and do this quite frequently. It would not be any large financial drain. It was going to be a much larger financial drain on both Pacific and Carnation. In the case of Carnation it was more serious because the result might well be that it lost its position in the British Columbia market. Certainly Carnation had not done very well there and it is true that after the two cents offer was exhausted it might have gone back in but it had done so badly in the past that its chances of recapturing that market could not have looked too good to it at that time.

. . . "

(Hearing, pp. 114-115)

The Commission does not accept this argument as showing that Carnation's action related only to the market in British Columbia. The Commission considers that such an argument would be equally relevant to any form of competitive activity which might be engaged in by Alpha, including activity in the Province of Alberta. Such an argument indicates to the Commission a design on the part of Carnation to limit or to attempt to limit any competitive activity on the part of rivals which it considered desirable to check. The evidence as to the meetings clearly shows, in the opinion of the Commission, that Carnation's interest in attempting to secure the elimination of competitive practices on the part of Pacific and Alpha embraced all of Western Canada including Alberta.

## CHAPTER VI

### CONCLUSIONS

In the appraisal of the arguments of counsel for Carnation which was given in the preceding chapter the Commission expressed the opinion that it was unable to accept the submission made on behalf of the company that Carnation's policy in selling evaporated milk in Alberta at a greatly reduced price had relation only to the competitive situation in British Columbia. As this is an essential point in the inquiry it is desirable to examine the matter more fully.

When Carnation acted to lower the prices of evaporated milk by one dollar per case in British Columbia and Alberta, effective January 4, 1960, Alpha had already started its programme of distributing evaporated milk with the label "2¢ off" in British Columbia. According to the evidence of Mr. Johnstone of Alpha, shipment of the specially labelled milk was made in the latter part of December, 1959 so that it would be available in retail stores at the beginning of January, 1960. Carnation had picked up information about the possibility of Alpha using a "2¢ off" label as early as December 11, 1959 (EMI 118, 149) and had definite confirmation by December 17, 1959 (EMI 117, 150) so that the appearance of Alpha's specially labelled milk in British Columbia at the beginning of January, 1960 did not come as a surprise to Carnation. Further, Alpha's promotion of "2¢ off" milk was limited to 15,000 cases so that it would be logical to assume that a large part of this quantity had been distributed to wholesalers and by them to retailers at the beginning of January, 1960. Carnation's action in reducing its price in Alberta could not be regarded as meeting Alpha's competition in British Columbia because it would not affect the distribution of Alpha's "2¢ off" milk of which shipment had been made to wholesalers in the latter part of December. In the opinion of the Commission, Carnation's action in Alberta was directed at the competitive activities of Alpha and Pacific throughout the West, including Alberta. It may be considered part of the competitive situation which Mr. Lang of Carnation anticipated in 1959 and which he described in the letter of December 11, 1959 to Mr. Crockett, previously quoted, from which the following paragraphs are again cited:

" . . .

Alpha seems to be becoming increasingly active in their promotion in the Prairies and, of course, in B. C. they have been pulling just above every possible move they could make. The crowning blow is the possibility of a '2 cents off label' shortly after the first of the year.

We feel that the time is getting close to when we will have a knock-down drag out competitive situation in the West. This situation has been brewing ever since our spread between the eastern zone price and the western zone price became greater than ten cents. They have had more money to play with and are becoming increasingly liberal with their promotion programs.

. . . "

(EMI 118, 149)

Although Carnation's concern over the use of a "price off" promotion by Alpha was explained by company representatives as due to Carnation's minor position in the British Columbia market, the purpose of its efforts, as counsel for Carnation pictured them was to check the development of this method of promotion on future occasions. Endeavours in this direction would apply to any selling territory in the Western Provinces including Alberta. In the opinion of the Commission, this indicates a policy which has or is designed to have a substantial effect on competition because of the manner in which the trade in evaporated milk is carried on in Western Canada.

The attitude of Carnation toward the "price off" method of promotion is difficult to understand in view of the extent to which this means of attempting to secure consumer patronage is now employed in the distribution of a wide variety of products. In a recent inquiry concerning the meat packing industry, the Commission reported as follows:

"There has been a development on a considerable scale of what are known in the trade as 'price off deals'. This system of merchandising involves the manufacturer making a reduction in the regular price of a branded product and printing on the package the amount of the reduction which is being made. . . ." (1)

Statistics furnished to the Commission in that inquiry showed that in the first half of 1960 from 40 to 50 per cent of consumer sales of shortening were being made in "Price Off Deals", and from 6 to 17 per cent of sales of margarine were being similarly made.

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(1) Report Concerning the Meat Packing Industry and the Acquisition of Wilsil Limited and Calgary Packers Limited by Canada Packers Limited, Ottawa, 1961, p. 182.

Although, on first learning of Alpha's "2¢ off" promotion, Carnation appears to have considered making a price reduction only in the area where Alpha's promotion would be carried on, this approach to meeting a new competitive situation was abandoned in favour of the policy of exerting pressure, as termed by counsel for Carnation, on Alpha and, as it turned out on Pacific as well.

The pressure exerted by Carnation, in the Commission's view of the evidence relating to the meetings between Carnation and Pacific and Alpha, was directed toward securing the adoption of policies by Pacific and Alpha which would eliminate forms of competitive activity which might have a bearing on the prices at which evaporated milk was supplied to distributors or on the prices charged consumers.

It was argued on behalf of Carnation that the practices of Pacific and Alpha in the Province of Alberta which were abandoned or modified under the pressure exerted by Carnation through its price cut in Alberta, were on the periphery of price and could not be regarded as of major consequence. The evidence in the inquiry leads the Commission to the conclusion that in the sale of so standard a product as evaporated whole milk the competition coming to bear upon price, in the absence of a price war, would be likely to take the form of narrow shading by way of discounts or allowances in one form or another. Such competitive practices, therefore, would constitute the most significant competition in the trade. In such circumstances the elimination or reduction in such forms of competitive activity must be considered as leading to a substantial lessening of competition. This must be the case even though the actual quantum of the changes which is brought about in a particular market cannot be found to be large in actual monetary terms. This conclusion is supported by the fact that Carnation considered that the cost to it of the price war in the west was a very substantial sum but that this large cost was worthwhile because of the significant effect on competition. This is indicated in the following portion from a letter of April 1, 1960 written by Mr. Lang of Carnation to Mr. Crockett:

" . . .

The price war in the west cost us about \$450,000.00 and so far it certainly has changed the tune of the competition and buyers by working out to be a good investment.

. . . "

(EMI 36A, 282-284)



It is the conclusion of the Commission that Carnation, in making the substantial reduction in the price of evaporated whole milk in Alberta, was endeavouring to exercise control over the practices of Alpha and Pacific in selling their products in Alberta, and that the effect of the action of Carnation was the likelihood that competition in the sale of evaporated whole milk in Alberta would be substantially lessened.

The Commission recommends that a court order be sought under the provisions of the Combines Investigation Act to restrain Carnation from engaging in such a policy in the future.

(Sgd.) C. R. Smith  
Chairman

(Sgd.) A. S. Whiteley  
Member

(Sgd.) Pierre Carignan  
Member

Ottawa ,  
August 28, 1962.







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